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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR 379 (PKC)

5 GEOVANNY FUENTES RAMIREZ,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.

9 March 19, 2021

9:20 a.m.

Before:

10 HON. P. KEVIN CASTEL,

11 District Judge  
12 and a jury

13 APPEARANCES

14 AUDREY STRAUSS,

United States Attorney for the

15 Southern District of New York

MICHAEL LOCKARD

16 JACOB GUTWILLIG

Assistant United States Attorneys

17 AVRAHAM CHAIM MOSKOWITZ

18 EYLAN SCHULMAN

Attorneys for Defendant

19 Also Present:

20 Gabriel Mitre, Interpreter (Spanish)

21 Sonia Berah, Interpreter (Spanish)

22 Brian Fairbanks, DEA Agent

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(Trial resumed; jury not present)

THE COURT: Good morning. Four things I want to address with you, and I'm going to start with the easiest.

So marked as Court Exhibit 11 are the final jury instructions. Court Exhibit 12 are the marked to show changes pages. So that's easy one number one.

Number two, I spent time yesterday with regard to moving the lawyers' podium. I discovered it can't be moved. What I can offer you -- and I have the AV person in the room here -- is we could set up a podium proximate to the jury box, but there is a distinct disadvantage. You'd have to wear your mask.

Number three, if you wanted to, you could -- another alternative, you could deliver your closing argument from the witness box, but I present that to you. If you have a preference other than delivering it from the lawyer podium that is presently set up in the courtroom, speak now.

All right. There is no request for the alternate podium, so I thank you, William, for being with us this morning.

MR. JARRETT: Thank you, your Honor.

THE COURT: What? Hello? Did somebody say something? No. OK. Thank you.

All right. The next issue is the statute of limitations. I took a look at it at the suggestion and at the

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1 request and on the application of the defendant yesterday. The  
2 charges, the three counts in the indictment, are subject to  
3 Section 3582's five-year statute of limitations. That is the  
4 starting point. However, the conspiracy charged in Counts One  
5 and Three do not require proof of an overt act. You can take a  
6 look at *Shabani*, 513 U.S. 10, and *Grammatikos*, 633 F.2d 1013.  
7 Conspiracy is a continuing offense, and that's true for the two  
8 conspiracies charged. Where a conspiracy statute does not  
9 require proof of an overt act and the indictment alleges a  
10 conspiracy that contemplates a continuity of purpose and a  
11 continued performance of acts, and the government has  
12 introduced sufficient evidence to show that such a conspiracy  
13 existed, the conspiracy is presumed to exist until there is an  
14 affirmative showing that it has been terminated. And where the  
15 government has presented sufficient evidence to show a  
16 conspiracy that has continuing purposes or goals, the burden is  
17 on the defendant to prove that the conspiracy was terminated,  
18 which is usually demonstrated by showing that the goals of the  
19 conspiracy were accomplished in some final manner or that he  
20 took affirmative steps to withdraw.

21 So as continuing offenses, the indictment was timely  
22 returned within five years from the period of time that the  
23 conspiracy was alleged to have continued to. In fact, the  
24 grand jury has charged that the conspiracy existed from in or  
25 about 2009, up to and including in or about 2020, and the

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1 indictment was filed on the public docket on June 3, 2020.

2 Now, turning to the next issue, the defendant's letter  
3 last evening from Mr. Schulman with regard to the 900 and 1100  
4 series of exhibits and the argument that there has to be  
5 evidence that the defendant's son, who I'll refer to as  
6 Mr. Gutierrez, Geovanny Daniel Gutierrez, was a member of the  
7 conspiracy for his hearsay statements to be admissible as  
8 coconspirator's statements. Mr. Schulman is correct in that  
9 regard.

10 Now, when faced with a question of either relevance or  
11 connection or other preliminary questions, they are decided by  
12 the Court on a preponderance of the evidence standard. And the  
13 question the Court asked itself is whether a jury could  
14 reasonably find the fact by a preponderance of the evidence.  
15 Here, there certainly was evidence from Rivera that there was a  
16 conspiracy and that defendant was a member of that conspiracy  
17 and certain other persons, not including Mr. Gutierrez, were  
18 members of that conspiracy. Evidence seized from the iCloud  
19 and Instagram accounts of Gutierrez included photographs.  
20 Photographs are not statements. They're physical evidence. So  
21 cash and photographs of cash are both physical evidence. The  
22 fact that something is a photograph of cash goes to weight as  
23 distinguished from cash itself, but the photographs show the  
24 defendant in a bulletproof vest and a Honduran military beret,  
25 the defendant and Gutierrez wearing -- or the defendant and

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1 Gutierrez together with Gutierrez wearing a Honduran National  
2 Police hat. This is in the context of testimony from other  
3 sources about the defendant co-opting and purchasing the  
4 nonintervention and cooperation of the Honduran police force as  
5 well as the military, pictures of Gutierrez and Juan Orlando  
6 Hernandez, pictures of Commissioner Martinez and Juan Orlando  
7 Hernandez, and pictures of firearms and bulk quantities of  
8 currency.

9 Now, as in many or most drug conspiracy cases, some of  
10 these items could have an innocent explanation, all right, of  
11 that is used for -- could be used for cooking a drug product,  
12 could also be used to bake bread or to grind coffee beans, or  
13 the like, or other products. It doesn't mean that it can't be  
14 a tool of the trade. But in combination these physical items  
15 of evidence, i.e., photographs of cash, bulletproof vests,  
16 presence with other persons who from other evidence were shown  
17 to be members of the conspiracy, photographs of firearms, all  
18 together weave together to place Mr. Gutierrez in the  
19 conspiracy.

20 Now, when you look at his statements -- and I can  
21 consider his statements in the context of the overall decision.  
22 I can't base it entirely on statements, and I haven't -- but  
23 the statements further demonstrate this, including identifying  
24 or using the word *sapo*, or frog, which is a pejorative to  
25 identify a snitch. This makes it even more persuasive.

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1           So I conclude that the statements made by  
2 Mr. Gutierrez were during and in furtherance of the conspiracy  
3 and are admissible under 801(d)(2)(E), or because of their  
4 unavailability and the fact that the statements would prove  
5 Gutierrez's and Martinez's guilt, they would be admissible  
6 under 804(b)(3) alternatively. So that evidence stands, and  
7 the motion to strike the evidence is denied.

8           At this point, unless there's anything further, I  
9 propose to bring our jurors up.

10           Garrett, can you make that happen. They're here? OK.

11           (Continued on next page)

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(Jury present)

THE COURT: Good morning, ladies and gentlemen. Thank you all for being here. As I told you yesterday -- I'm just going to repeat this briefly -- this is the opportunity for the lawyers to sum up and tell you what they believe the evidence shows.

By the way, was there a stipulation or some matter, preliminary matter? Go ahead, Mr. Moskowitz.

MR. MOSKOWITZ: Yes, your Honor, if I may.

THE COURT: Yes. My apologies.

This was the additional housekeeping matter that I said we would -- that Mr. Moskowitz could take up.

Go ahead.

MR. MOSKOWITZ: Good morning, your Honor.

THE COURT: And this is evidence, not argument right now.

MR. MOSKOWITZ: There's a stipulation between the parties that reads as follows:

It is hereby stipulated and agreed by and between the United States of America by Audrey Strauss, United States Attorney, Jacob Gutwillig and Michael Lockard, Assistant United States Attorneys, and Geovanny Fuentes Ramirez, by and through his attorneys, Avraham Moskowitz and Eylan Schulman, that Government Exhibit 15 reflects notes taken by one of the participants at a meeting between Assistant United States

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1 Attorney Emil J. Bove III, DEA Special Agent Evan Martinez,  
2 Devis Leonel Rivera Maradiaga, and a Spanish-language  
3 interpreter on or about August 20, 2015.

4 Two, on or about October 25, 2019, Jose Sanchez, his  
5 immigration attorney, FBI Washington field office agents Justin  
6 Holgate and Steve Weatherhead, U.S. Department of Justice's  
7 Narcotics and Dangerous Drug section trial attorney Anthony  
8 Aminoff, and a Spanish-language interpreter met. Notes of that  
9 meeting taken by one of the participants state, among other  
10 things: That a drug lab in Cerro Negro "was raided by Honduran  
11 forces working with the DEA in March 2015" and that "one of the  
12 conversations overheard between President Hernandez and Fuentes  
13 took place three weeks after the raid and involved the  
14 president offering Fuentes help to reopen the lab."

15 Paragraph 3, Government Exhibit 15 and this  
16 stipulation, Government Exhibit 1009, may be received in  
17 evidence at trial.

18 And then, your Honor, if the Court -- with the Court's  
19 permission, I'd ask Ms. Hurst to put Government Exhibit 15 up  
20 on the board for the jury.

21 THE COURT: Permission granted.

22 By the way, you're offering the stipulation?

23 MR. MOSKOWITZ: Offering the stipulation.

24 THE COURT: And the exhibit?

25 MR. MOSKOWITZ: And the exhibit.



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1 THE COURT: Any objection?

2 MR. MOSKOWITZ: I may have misspoken. I think I said,  
3 just going back to paragraph 2, the date of the raid that was  
4 quoted in the stipulation was March 2014. I think I got that  
5 right, but I could have misspoken.

6 THE COURT: OK. Any objection to the stipulation and  
7 the exhibit?

8 MR. LOCKARD: No, your Honor.

9 THE COURT: They are received into evidence.

10 (Government's Exhibits 15 and 1009 received in  
11 evidence)

12

13 THE COURT: Again, the stipulation is what and the  
14 exhibit is what number?

15 MR. MOSKOWITZ: The stipulation is 1009.

16 THE COURT: Yes.

17 MR. MOSKOWITZ: The exhibit is 15.

18 THE COURT: Thank you. They're received.

19 Go ahead, you may publish.

20 Mr. Moskowitz, what I would suggest is, number one,  
21 the exhibit, the two exhibits -- oh, here it is. Here we are.  
22 Good. Thank you, Garrett.

23 MR. MOSKOWITZ: OK. There we go. It's relatively  
24 short, so I'm going to just go through it with the jury, your  
25 Honor.

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Bullet number one reads:

"Metro is Ruben Santos' cousin's stepbrother. Metro introduced LR to Lopez Mejia, comisario, who helped LR find sicarios to kill Coqui.

"Two, Metro helped with transportation for Cachiros. On a few occasions, Metro would coordinate with police, such as Avila, Mejia Vargas, LZ.

"Metro paid Vaquero to kill Pluto. Pluto was a trafficker who was to receive a plane in Roatan. Military tried to interdict. Pluto called LR and got plane diverted to Olancho. And the pilots, one male, one female, died landing the plane.

"In 2010 or 2011, Metro stopped working with Cachiros as much but was still friendly. Metro started working with Yuca and then some other Colombians. Valladares, (attorney and former police officer) told LR that Metro killed the policeman in Choloma. Metro was telling them Cachiros did the murder.

"LR called Metro and asked why he was killing people and blaming Cachiros.

"Metro had a partner, Geovanny Fuentes. In Gomoa, Cortes, a mini lab was interdicted. Metro told people the lab was Cachiros.

"LR also heard that Metro was starting to try to have" --

THE COURT: It says "head." You can argue whatever

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1 you want, but it says "head."

2 MR. MOSKOWITZ: Where was I?

3 "LR also head that Metro was starting to try to have  
4 LR killed.

5 "LR met with Metro and things calmed down for a while,  
6 but then Vaquero told LR that after the meeting Metro told  
7 Vaquero M would pay V 100K to kill LR. LR asked V if he had  
8 people to kill Metro, and V agreed.

9 "V told LR that Metro was sleeping in a house and that  
10 V and others disguised as police went in and killed Metro. V  
11 said that Metro shot at them as they entered, and that V killed  
12 another person who was there.

13 "LR paid about 30K.

14 "On his own, Vaquero tried to kill Geovanny Fuentes.  
15 V said he was at a horse race and killed someone, and GF called  
16 the police. Vaquero went to jail 2-3 years. After V was  
17 released and V killed Metro, V tried to kill GF. V told LR  
18 that he went into GF's security firm and started shooting at  
19 GF. V said that GF was not injured."

20 That's the --

21 THE COURT: All right. Thank you.

22 All right. And with that, the defendant's case --  
23 defendant rests, is that correct?

24 MR. MOSKOWITZ: Yes, that is correct.

25 THE COURT: Yes. And there's no rebuttal case from

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1 the government, correct?

2 MR. LOCKARD: No, your Honor.

3 THE COURT: All right. So, ladies and gentlemen, as I  
4 told you yesterday, when the lawyers now stand at the podium,  
5 the statements they make are not evidence. They're a review of  
6 the evidence. They're what they believe the evidence shows.  
7 But it's your recollection of the evidence that controls, and  
8 if necessary, you can look at the exhibits or we could have the  
9 testimony read back for you if you'd like during the  
10 deliberation process.

11 As I also told you, I've told the lawyers how I plan  
12 to instruct you in my final instructions. They may refer to  
13 that by saying, I expect that the judge will tell you thus and  
14 so, but if any lawyer states a principle of law different from  
15 what I tell you, it's what I tell you that controls.

16 With that, Mr. Lockard, you're going to deliver the  
17 initial summation?

18 Now, ladies and gentlemen, as you've heard from me  
19 many times, it is the government, and the government alone,  
20 that has the burden of proof in this case. So the government  
21 will deliver an initial summation, and then the defendant may,  
22 but is not required, to deliver a summation after that, defense  
23 counsel. And the government, as the party with the burden of  
24 proof, gets to deliver a brief rebuttal summation. So this is  
25 fair because the government is the party with the burden of

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Summation - Mr. Lockard

1 proof, so they go first and they go last. And they're the only  
2 party with the burden of proof in this case.

3 So, Mr. Lockard, whenever you're ready.

4 MR. LOCKARD: Over the last two weeks of this trial,  
5 you have seen overwhelming evidence that the defendant,  
6 Geovanny Fuentes Ramirez, produced, manufactured, and  
7 trafficked in tons of cocaine destined for communities in the  
8 United States, and he did so using weapons and violence.  
9 You've learned about the defendant's cocaine lab in the hills  
10 outside of his hometown in Honduras. You've learned that he  
11 produced huge quantities of cocaine at that lab and that he  
12 guarded it and defended it with armed men carrying  
13 semiautomatic pistols and assault rifles.

14 You've learned how he used bought-and-paid-for cops  
15 and politicians to protect his drug trafficking. You've  
16 learned how he used briefcases of cash and kilos of cocaine to  
17 buy a corrupt bargain with the soon to be president of Honduras  
18 and to obtain protection from the highest levels of his own  
19 government. You've also learned about the deadly and  
20 destructive tools that the defendant used to protect his drug  
21 trafficking. To move the literal tons of cocaine, the  
22 defendant used handguns, handguns modified to fire  
23 automatically, assault rifles, and grenade launchers.

24 Now, the defendant did not start out as a multiton  
25 trafficker. He started out selling kilogram quantities of

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Summation - Mr. Lockard

1 cocaine in Miami. So how did he make that rise happen? He  
2 made it happen by partnering with the biggest and most  
3 dangerous cartels he could find. He did it by buying the  
4 highest-ranking police officers that were for sale. He  
5 murdered anyone who threatened his business or his partners.  
6 He did what the defendant did best. He killed those he could  
7 and bought those that he couldn't.

8 This summation is my opportunity to put together the  
9 evidence that you've heard over the course of this trial to  
10 help explain how it fits together and how it leads inescapably  
11 to one conclusion: That the defendant, Geovanny Fuentes  
12 Ramirez, conspired to import tons of cocaine into this country,  
13 that he possessed and conspired to possess weapons, including  
14 machine guns and destructive devices in furtherance of that  
15 conspiracy.

16 Now, over the course of this trial you've learned that  
17 Geovanny Fuentes Ramirez got started in the drug business by  
18 partnering with Melvin Sandrez, called Metro, to sell kilogram  
19 quantities of cocaine in Miami. You've also learned who Metro  
20 is. He's a cousin of the leaders of the Cachiros cartel,  
21 Javier and Leonel Rivera Maradiaga. They were the leaders of  
22 what was at the time one of the most powerful cartels in  
23 Honduras.

24 You also know that Mr. Sandrez is himself a drug  
25 trafficker and a sicario, a hitman, and someone who obtains

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1 hitmen for others. You also know that the defendant and Metro  
2 were partners, close partners, for years in drug trafficking  
3 and in murder. In the 2000s the defendant and Metro worked  
4 together to send cocaine to Miami. They were sending  
5 relatively small quantities, one or two or five kilograms at a  
6 time, from Honduras. And I say "relatively small" because each  
7 kilogram of cocaine contains approximately 8,000 doses. So,  
8 ladies and gentlemen, these are not small quantities, but they  
9 are dwarfed by the amounts of cocaine that the defendant would  
10 soon be trafficking.

11 When the work in Miami fell through, Geovanny Fuentes  
12 Ramirez and his partner Metro started a new venture. In about  
13 2009 or 2010, they started a drug lab together in the mountains  
14 of Cerro Negro outside of their hometown of Choloma, but they  
15 needed money for that lab. They needed money to pay for the  
16 chemicals and the equipment. They needed money to pay for the  
17 men who would guard it and the weapons they would carry. They  
18 needed money to buy the cocaine base, the semi-processed  
19 cocaine smuggled in from South America that would be processed  
20 into finished cocaine at that lab.

21 The defendant and his partner Metro needed that money  
22 because once the lab was up and running, it would produce huge  
23 quantities of cocaine and the huge amounts of money that would  
24 go with it. You have heard, for example, how the defendant  
25 eventually would be bringing in cocaine base by the boatload to

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Summation - Mr. Lockard

1 process at that drug lab, the same boats that the defendant  
2 would later convert into fishing boats and he would give to his  
3 coconspirators Javier and Leonel Rivera.

4 This lab would be big business for the defendant.  
5 You've heard the expert testimony, for example, that in  
6 Honduras a kilogram of cocaine is worth about \$9,000. That's  
7 about three times the annual median salary of a Honduran  
8 household for one kilogram. And for every thousand kilograms  
9 of cocaine base that the defendant processed and turned into  
10 finished cocaine, that's \$9 million worth of cocaine. That  
11 same kilogram, once it moves near the Mexico-Guatemala border  
12 is worth 12 to \$16,000, and in the United States that kilogram  
13 is worth around \$30,000. Every thousand kilograms of cocaine  
14 base that the defendant processed was worth \$30 million in the  
15 United States. This lab was incredibly important to the  
16 defendant.

17 Now, I expect defense counsel is going to deny that  
18 the defendant had anything to do with this drug lab, but  
19 there's no dispute that the lab actually existed. You've heard  
20 how it was raided. And there's no dispute that it existed on  
21 land that the defendant controlled. He acknowledges he had a  
22 coffee plantation there. Ladies and gentlemen, you've seen the  
23 evidence that shows unequivocally that the defendant owned and  
24 operated that lab.

25 So let's talk about how the evidence shows you that.



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1 First, the defendant told Leonel Rivera about the lab.  
2 In his first meeting with Leonel Rivera, sitting in that car at  
3 Rivera's gas station in Omoa, Honduras, surrounded by teams of  
4 armed security, the defendant described how his lab had  
5 recently started up. He described how he guarded the lab with  
6 men carrying AR-15s, AK-47s, and other weapons. Mr. Fuentes  
7 asked Leonel Rivera to invest in his lab and to help pay for  
8 cocaine base smuggled from South America.

9 Second, the defendant told Leonel Rivera again about  
10 the lab and about a Honduran police investigation and a raid  
11 that eventually came out of that investigation. The defendant  
12 said that the investigation was about his lab in the Cerro  
13 region of the Cortes department, but because of the defendant's  
14 corrupt police contacts, those of himself and his drug  
15 trafficking partner Chepe Handal, he knew about the raid ahead  
16 of time, and he moved the cocaine out of the lab. And when the  
17 raid hit, no drugs were found.

18 Third, the defendant told Leonel Rivera again about  
19 the lab when he told Rivera that he had found and murdered the  
20 police officer who had led that investigation. The defendant  
21 didn't just murder the police officer. He tortured and  
22 executed him. The defendant, Metro, and their hitmen, they  
23 found that police officer on a night out at Metro's club. They  
24 kidnapped him. They drove him to an isolated area outside of  
25 town. The defendant put a bread bag over the officer's head

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1 and beat him. Metro used the butt of his gun to beat the  
2 officer in the head and to smash his fingers, all the while the  
3 victim was begging for his life. And then the defendant  
4 murdered the officer with two shots to the head. He called  
5 them mercy shots.

6 So why did the defendant kidnap, torture, and murder  
7 the police officer? It wasn't just revenge for the raid.  
8 After all, because he had been tipped off, the defendant didn't  
9 lose any of his cocaine. The raid hadn't hurt him all that  
10 much. The defendant did this to get information. Mr. Fuentes  
11 wanted to know if the police had learned that Fuad Jarufe, the  
12 wealthy Choloma businessman who acted as the defendant's bank,  
13 was involved in the investigation. But the investigation  
14 hadn't uncovered Jarufe's role, and so the defendant was happy.  
15 After kidnapping, torturing, and murdering a police officer,  
16 the defendant was happy because the man who helped bankroll his  
17 drug trafficking was in the clear.

18 Fourth, Javier Choloma told Leonel Rivera about the  
19 defendant's drug lab. You see, because of the raid on the drug  
20 lab, the defendant and Metro had transferred their interest in  
21 a Choloma soccer club into Javier Choloma's name. So even  
22 though the defendant had closed one investigation into the drug  
23 lab by a Honduran police force based in San Pedro Sula, there  
24 was a second investigation being conducted by a police force  
25 based in the nation's capital. So to protect their assets from

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1 being seized, the defendant and Metro used Javier Choloma as a  
2 frontman to hide and protect their business.

3 Fifth, Jose Sanchez, the accountant at Jarufe's  
4 company, he knew about the defendant's lab. Before the lab was  
5 raided, Jarufe instructed Sanchez to deliver cash to the  
6 defendant's property at Cerro Negro, and Sanchez went twice,  
7 delivering several thousand lempiras, the Honduran currency, to  
8 that location. Both times armed security stopped Sanchez from  
9 entering. Armed men in street clothes, not coffee farmers,  
10 stopped him at the gate. And just like the defendant had  
11 described to Leonel Rivera, Mr. Sanchez saw men armed with  
12 AK-47s along with their semiautomatic pistols.

13 Sixth, Mr. Sanchez told you what happened after the  
14 raid. Two things happened: The first thing that happened is  
15 that the defendant laid low. Although Mr. Fuentes came to Fuad  
16 Jarufe's company on an almost daily basis, after the lab he  
17 wasn't seen for about a month. You heard the same thing from  
18 Jorge Medina, the agricultural engineer for the Cachiros'  
19 company, Ganaderos. He witnessed exactly the same thing.

20 Now, when the defendant returned from laying low, the  
21 second thing happened. You see, he returned because he had  
22 found a way to fix the second investigation. The defendant had  
23 killed his way out of the first investigation and he bribed his  
24 way out of the second. This man, the head of the Honduran  
25 courts, traveled from the nation's capital to Jarufe's business

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Summation - Mr. Lockard

1 to meet with the defendant. He said that his boss had sent him  
2 to help the defendant out. And Jarufe, using money that he was  
3 holding for the defendant, paid Julio Cesar Barahona a 30,000  
4 lempira bribe. And that shows you exactly what Leonel Rivera  
5 had said. There were two investigations that the defendant had  
6 to solve.

7 Seventh, Mr. Sanchez told you that Mr. Fuentes later  
8 partnered with a presidential candidate, Juan Orlando  
9 Hernandez, and with his brother, Tony Hernandez.

10 Now, in about 2013, Juan Orlando Hernandez was the  
11 president of the Honduran Congress. He was also the man who  
12 had appointed Julio Cesar Barahona to his position as the head  
13 of the Honduran court system. Juan Orlando Hernandez was  
14 running for president, and presidential candidates in Honduras  
15 can reap enormous bribes. You heard how the Cachiros paid huge  
16 sums of money to presidents and to presidential candidates, to  
17 Juan Orlando Hernandez, to his predecessor Pepe Lobo, to his  
18 predecessor Manuel Zelaya, to Ricardo Alvarez who would become  
19 vice president, and to many others. The defendant took a page  
20 from that same playbook, using Jarufe's powerful political  
21 connections to buy protection.

22 So Mr. Sanchez saw Jarufe and the defendant and Juan  
23 Orlando Hernandez meeting in the office to seal their deal.  
24 The defendant gave the president-to-be \$15,000 in cash in  
25 United States currency. But Juan Orlando Hernandez didn't just

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1 want the defendant's cash, he wanted access to the defendant's  
2 cocaine. The defendant's drug lab was a short distance from  
3 Honduras' biggest port city, Puerto Cortes, and Juan Orlando  
4 wanted the defendant's cocaine so he could export it through  
5 that port. Access to the defendant's lab would be worth  
6 millions, and Juan Orlando Hernandez's protection was priceless  
7 to the defendant.

8 So Hernandez said that he would give the defendant the  
9 contact information for his brother, Tony Hernandez. Tony  
10 Hernandez, like Juan Orlando Hernandez, is one of the  
11 defendant's narcotics trafficking partners. He's the man who  
12 ran drug trafficking for Juan Orlando. Tony Hernandez is the  
13 man who accepted bribes of drug money from the Cachiros. He is  
14 the man who stamped kilograms of cocaine with his own initials.

15 So from the evidence you know that the defendant owned  
16 and operated that cocaine lab outside of Choloma, and you know  
17 that he protected it with men armed with AK-47s and  
18 semiautomatic pistols and that he imported cocaine base from  
19 Colombia to process it into finished cocaine to import into the  
20 United States. And as the defendant also said in his first  
21 meeting with Leonel Rivera, he wanted the Cachiros to partner  
22 with him to invest in that lab, but the Cachiros never did, and  
23 the defendant found other partners, partners like Chepe Handal,  
24 the San Pedro Sula drug trafficker, partners like Juan Orlando  
25 Hernandez and Tony Hernandez.

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Summation - Mr. Lockard

1           The defendant also wanted to work with the Cachiros in  
2 other cocaine operations. The defendant's partner had done  
3 work for the Cachiros since around 2003 providing security for  
4 drug shipments and introducing sicarios, hitmen. Now the  
5 defendant and Metro wanted to work with the Cachiros together.  
6 So in or about 2009 or 2010, Metro started pitching his  
7 cousins, pitching them on the defendant's corrupt police  
8 contacts and how those dirty cops could help the Cachiros move  
9 huge shipments of cocaine through Honduras safely. You heard  
10 how shipments of hundreds or even thousands of kilograms of  
11 cocaine were brought in from South America to Honduras in boats  
12 and in planes. And when that cocaine arrived, it had to be  
13 moved. It had to be transported to where the buyers were,  
14 buyers in western Honduras near the Guatemalan border, and it  
15 had to be protected. It was transported in cattle trucks and  
16 in freight trucks, and it was accompanied by armed men in armed  
17 vehicles to give protection from rivals, protection from  
18 robbers, and protection from the police.

19           And you've also learned, ladies and gentlemen, that  
20 the defendant had those corrupt police contacts. He had a  
21 Rolodex worth. You've heard how he worked with dirty cops who  
22 had also worked for other Honduran drug traffickers, cops like  
23 Commissioner Martinez, one of the highest-ranking police  
24 officers in Honduras. Both Metro and Mr. Fuentes told Leonel  
25 Rivera how the defendant worked with Commissioner Martinez to

L3JHRAM1

Summation - Mr. Lockard

1 protect drug shipments.

2 Now, the position of commissioner is a high rank in  
3 Honduras. There are only about 20 in the entire country. And  
4 you saw from Commissioner Martinez's own LinkedIn page, that  
5 is, before he took it down after he was identified as a  
6 conspirator, that he had been the director of finance for the  
7 Honduran National Police. This powerful police officer was  
8 touting his coursework in good police practices while he was  
9 protecting cocaine traffickers. And the defendant needed  
10 Commissioner Martinez because if there was a police checkpoint  
11 in the way of a drug shipment, the commissioner could remove it  
12 with a phone call. And you know that what the defendant told  
13 Leonel Rivera is true because that evidence is all over his  
14 very own cell phone. You saw the contact information. You saw  
15 the pictures, you saw the family photos, and you saw  
16 instructions about evading law enforcement, about detecting and  
17 deleting wiretaps from as recently as February of 2020.  
18 Commissioner Martinez warned the defendant that Martinez  
19 himself might be subject to wiretaps, and the defendant  
20 confirmed that another law enforcement contact had also warned  
21 him, had warned him not to talk so much crap on the phone, not  
22 to talk so openly about his criminal activities.

23 Commissioner Martinez was a powerful ally of the  
24 defendant, but he was not the only one. You've also learned  
25 how the defendant had other corrupt police and military

L3JHRAM1

Summation - Mr. Lockard

1 contacts. Some of these came through his partner Metro who  
2 spent so much time around corrupt metropolitan police that it  
3 gave him his nickname, Metro. Some came from other drug  
4 traffickers in the San Pedro Sula area who had used a group of  
5 dirty police to help transport and protect cocaine shipments.

6 And the defendant's phone lists police contact after  
7 police contact, officer after officer. You've heard about some  
8 of them, like Leonel Saucedo and Melvin Saucedo, a commissioner  
9 and a subcommissioner who met with the government at Fuad  
10 Jarufe's offices. You've learned about the defendant's  
11 military contacts as well. The defendant was given a green  
12 AR-15 rifle by his military friends. Mr. Sanchez and  
13 Mr. Medina both saw that weapon, and the defendant talked to  
14 both of them about that gift, bragging about it, telling them  
15 that it had come from his military friends. And you saw that  
16 the defendant's son has pictures of an assault rifle that match  
17 that description. And you've learned that the defendant got  
18 other equipment and assistance from the military as well:  
19 uniforms, police vests, handcuffs. And you know that the  
20 defendant had that equipment because it's also on his phone.

21 Now, those were gifts from the Honduran 105th military  
22 brigade which is based in San Pedro Sula, just south of  
23 Choloma. At the time the head of that brigade was Orlando  
24 Ponce Fonseca, a man who would later become the commander of  
25 the Honduran anti-drug trafficking force for the north coast of



L3JHRAM1

Summation - Mr. Lockard

1 Honduras, an important coast for drug trafficking and  
2 transportation. And General Fonseca is also a contact in the  
3 defendant's phone. You know that the defendant had these  
4 contacts because he used them. He used them to protect his  
5 cocaine on its path through Honduras, on its way to the United  
6 States.

7 Now, the defendant's roster of dirty cops and dirty  
8 military contacts was a major selling point in his pitch to  
9 work with the Cachiros. Those contacts would prove invaluable  
10 in protecting multimillion-dollar shipments of cocaine across  
11 Honduras, transporting it from its point of entry from South  
12 America to the buyers on the western border near Guatamala  
13 where the cocaine would be taken further north through Mexico  
14 and into the U.S.

15 But the defendant didn't just rely on his roster of  
16 dirty cops. He also relied on his own savagery. The defendant  
17 wanted to work with the Cachiros so badly that he literally  
18 killed for the chance. One night when the defendant was out  
19 drinking with a boat mechanic, he learned that the mechanic had  
20 cheated Leonel Rivera out of several thousand dollars. As the  
21 mechanic told this story to his new drinking partner, the  
22 defendant saw an opportunity, an opportunity to ingratiate  
23 himself with the Cachiros. So he called another corrupt police  
24 contact, he had the mechanic arrested, he had the mechanic  
25 brought to him, and he beat and he murdered the mechanic, and

L3JHRAM1

Summation - Mr. Lockard

1 he took pictures of his crime so that he could prove his  
2 handiwork. He treated torture and murder like a job interview.

3 So Metro called Leonel Rivera to meet at the nightclub  
4 so that the defendant could brag about it. He was proud of it.  
5 He was excited about it. And like his partner Metro said, it  
6 proved that the defendant would do anything. He would use his  
7 corrupt contacts, he would protect the cocaine, and he would  
8 kill. And soon enough, the defendant got what he wanted, and  
9 he started working with the Cachiros. And as you've already  
10 heard, and we'll talk about it a little bit later, he also  
11 started working with other large and violent cartels. But  
12 first let's talk about the work that he did for Leonel Rivera.

13 Over the period of approximately a year, the defendant  
14 protected and transported three huge cocaine shipments. First  
15 was a 425- to 530-kilogram shipment of cocaine that arrives in  
16 eastern Honduras from South America by airplane. It's a  
17 shipment that was sent by the Colombian cocaine trafficker  
18 Alfonso Sierra Vargas Renteria. The defendant protected and  
19 transported that cocaine from a ranch near El Tigre to near the  
20 Guatamalan border where it was delivered to Los Valles cartel.

21 Second was a shipment of 500 to 570 kilograms of  
22 cocaine that arrived by plane at another the airstrip in  
23 eastern Honduras. This was an airstrip controlled by the  
24 Honduran Congressman Fredy Nájera. This cocaine was also  
25 supplied by the Colombian cartel leader Renteria, and the

L3JHRAM1

Summation - Mr. Lockard

1 defendant transported and protected that cocaine from a ranch  
2 near Tocoa to the Los Valles cartel near the Guatamalan border.

3 Third was a shipment of about 425 to 500 kilograms of  
4 cocaine that arrived again by airplane to an airstrip not too  
5 far from Choloma. This was sent by a drug trafficker called  
6 Jack. The defendant transported and protected that cocaine to  
7 a location near Guatamala so that Jack could deliver it to his  
8 Mexican buyers for them to take it to the United States.

9 And to protect and transport that cocaine, the  
10 defendant used his police contacts and he used his armory. He  
11 used heavy-duty military-grade weapons, handguns modified to  
12 fire in bursts like an automatic weapon, assault rifles,  
13 grenade launchers. And you heard how the defendant described  
14 how he would repel an attack with grenade launchers and assault  
15 rifles that they carried in their cars that accompanied the  
16 truck with the cocaine concealed inside it, weapons that are  
17 designed for taking out small armored vehicles.

18 But the defendant wasn't satisfied with protecting  
19 someone else's cocaine. He wanted to be the principal. He  
20 wanted to be the one buying and selling for himself. He was  
21 using boats, boats to bring in cocaine base, base to the lab  
22 where it could be processed into finished cocaine, and he also  
23 started to become a buyer of finished cocaine from South  
24 America as well.

25 And the defendant wasn't working with just the

L3JHRAM1

Summation - Mr. Lockard

1 Cachiros. You've learned how he partnered up with the Sinaloa  
2 cartel, the largest and most dangerous cartel in Mexico headed  
3 at that time by the infamous drug trafficker Chapo Guzman. And  
4 you heard how Chapo Guzman's cousin Juanito described the  
5 business that Sinaloa had done with the defendant. The  
6 defendant had sold a 500-kilogram shipment to Sinaloa, then he  
7 had sold a thousand kilogram shipment to Sinaloa, and then a  
8 1,500-kilogram shipment, 3,000 kilos, three tons of cocaine,  
9 all destined for the United States through the Mexican cartels.

10 Now, by this time the defendant and his partner Metro,  
11 they weren't small time. They were large-scale traffickers,  
12 even rivals to the Cachiros, and things fell apart between  
13 them. There came a time when the defendant asked Leonel Rivera  
14 for a million-dollar loan so that he could buy 2,000 kilos of  
15 cocaine from a Colombian supplier and ship it by boat to Puerto  
16 Cortes on the north coast of Honduras near Choloma. Mr. Rivera  
17 refused to make the loan, and losing that deal made the  
18 defendant and his partner angry, so angry that they decided to  
19 have the Cachiros killed.

20 Leonel Rivera learned of that plot to murder him and  
21 his brother from the would-be assassin, a sicario named  
22 Vaquero. And in this trial you learned how the defendant and  
23 Metro hired Vaquero to murder another man, Edgar Rios, who went  
24 by the name Pluto. The defendant had given Pluto 100 kilograms  
25 of cocaine to sell, but Pluto couldn't sell it because the

L3JHRAM1

Summation - Mr. Lockard

1 cocaine was wet, which destroyed its value. And because Pluto  
2 couldn't sell the wet cocaine, he couldn't pay the defendant,  
3 but the defendant didn't care why Pluto couldn't pay, and so he  
4 and Metro hired Vaquero to kill Pluto.

5 That murder was just part of a string of murders that  
6 the defendant and Metro had been committing. We've already  
7 talked this morning about the murder of the mechanic. We've  
8 talked about the murder of the police officer. There was also  
9 the murder they committed of two hitmen, two sicarios, who had  
10 killed Metro's brother over a drug debt. In this trial you've  
11 learned how the defendant and Metro and a corrupt cop named  
12 Juan Manuel Avila Meza. They found those two sicarios, they  
13 kidnapped them from their car, they drove them outside the city  
14 where they beat and tortured and murdered those two hitmen, and  
15 the defendant emptied a can of gasoline on them and Avila Meza  
16 lit the match.

17 So after the murder of Pluto, Leonel Rivera spoke to  
18 Vaquero, and Vaquero told Rivera about the defendant and  
19 Metro's plan to have the Cachiros brothers murdered and offered  
20 to turn on the defendant and Metro and to murder them instead.  
21 Rivera agreed, and Vaquero took a number of armed men to the  
22 house where Metro was staying, and they invaded and they shot  
23 Metro. The defendant proved a tougher target, and he fought  
24 off the attack on his home, chasing away the attackers and  
25 wounding some of Vaquero's men. And after that, as you've

L3JHRAM1

Summation - Mr. Lockard

1 learned, the defendant and Mr. Rivera called a truce. And  
2 shortly after that, Mr. Rivera started cooperating with the DEA  
3 and had no more contact with the defendant.

4 Now, in this trial you've also learned how the  
5 defendant partnered with Fuad Jarufe, the owner of a company in  
6 Choloma, and how Jarufe acted as the defendant's personal bank  
7 and money launderer. Because the profits you earn, the U.S.  
8 dollars in cash from drug dealing, are no good unless you can  
9 launder them. So you heard from Jose Sanchez about how the  
10 defendant regularly brought in unexplained U.S. cash, \$20 bills  
11 bundled \$10,000 and \$15,000 at a time so that he could exchange  
12 those dollars for Honduran currency. And you learned that the  
13 defendant was the only person that Jarufe's company did this  
14 for, but the defendant was friends with Jarufe's son, and he  
15 was able to use the company to launder the money. And Sanchez,  
16 an accountant for Jarufe's company, he knew right away that  
17 there wasn't a good explanation for where this cash was coming  
18 from, and he acknowledged to you that he knew he was laundering  
19 the defendant's money.

20 Now, I expect defense counsel may argue to you that  
21 the defendant's business with Jarufe's company was legitimate  
22 business and that it was the only business that the defendant  
23 did, not drug trafficking, that the defendant is just a biomass  
24 businessman, but you already know that that's not true. You've  
25 learned how drug traffickers use seemingly legitimate

L3JHRAM1

Summation - Mr. Lockard

1 businesses to launder large sums of drug money. You heard it  
2 from Leonel Rivera. Drug money, U.S. dollars, are used to fund  
3 the business operations and then the business gets paid in  
4 local currency. It's exactly the same model that the Cachiros  
5 used, and once again the defendant took a page from the  
6 Cachiros' playbook.

7 Jarufe was important to the defendant for another  
8 reason. Jarufe is the one who gave the defendant the land in  
9 Cerro Negro where the defendant operated his drug lab. That  
10 was the reason that the defendant tortured and murdered the  
11 police officer to make sure that Jarufe was protected.

12 Now I want to turn back to the defendant's partnership  
13 with the president of Honduras, Juan Orlando Hernandez, which  
14 started when Hernandez was running for president. We've  
15 already talked about that partnership and about the deal that  
16 they struck and about the involvement of the president's  
17 brother, Tony Hernandez. But I expect that defense counsel may  
18 argue to you that even if the defendant did operate the lab,  
19 which you know that he did, that the lab was shut down after  
20 the police raid in 2011.

21 (Continued on next page)

22

23

24

25

L3JKRAM2

Summation - Mr. Lockard

1 MR. LOCKARD: (Continuing) And there are a number of  
2 reasons why you know that that is not true. One is that the  
3 defendant had no reason to shut the lab. There was a raid, but  
4 he'd been tipped off. No drugs had been seized. The officer  
5 conducting that investigation was dead. The head of the  
6 Honduran court system was bribed.

7 There's another reason you know the defendant didn't  
8 shut the lab. There was too much money to be made. For all  
9 the same reasons that the defendant started the lab, for all  
10 the reasons he had to turn cocaine base into a \$9,000-kilogram  
11 of finished cocaine, those reasons were still there.

12 You also know that the defendant still had his drug  
13 trafficking relationships. Those didn't stop when Leonel  
14 Rivera started to work with the DEA. His partnership with  
15 Chepe Handal was still there, his ability to sell to Sinaloa  
16 was still there, his Colombian suppliers were still there.

17 You also know that that lab didn't shut down because  
18 the defendant had reached an agreement with Juan Orlando and  
19 Tony Hernandez to continue operating that lab. That is not a  
20 reason to wind down the cocaine lab. It is a reason to wind it  
21 up, to make it grow, to keep it going.

22 And there's one more reason you know that the  
23 defendant didn't stop manufacturing and distributing cocaine -  
24 it's because he kept doing the same things after 2013 and after  
25 2014 that he had done before. As recently as 2019, the year



L3JKRAM2

Summation – Mr. Lockard

1 before his arrest, the defendant continued to meet with, and  
2 pay bribes to, President Hernandez. When the defendant saw  
3 Leonel Rivera in jail, he described how he'd had two meetings  
4 the prior year with President Hernandez and had paid him bribes  
5 in both meetings. And he described a meeting that the  
6 defendant had had along with Commissioner Martinez, with a  
7 senior military official, at Hernandez's request, to talk about  
8 a money-laundering company.

9 Now, you've also heard how the defendant's  
10 coconspirator and the president's brother, Tony Hernandez, was  
11 arrested here in the United States, and you've heard that  
12 during that trial, certain allegations about President  
13 Hernandez were made public for the first time. One of those  
14 times was on May 28th of 2019. And the very next day,  
15 May 29th, 2019, the defendant was getting Waze directions to  
16 the presidential palace in the Honduran capital, Tegucigalpa.  
17 Not once, repeatedly. And afterwards, the defendant searched  
18 other locations in Tegucigalpa, including the Ministry for  
19 Economic Development.

20 Now, there was another filing in the Tony Hernandez  
21 prosecution related to those same allegations in June, and  
22 again, the next day, the defendant was getting driving  
23 directions to the presidential palace. What does that mean?  
24 It means the defendant and President Hernandez were keeping  
25 close tabs on the case against their coconspirator, Tony

L3JKRAM2

Summation - Mr. Lockard

1 Hernandez. It means that what the defendant told Leonel Rivera  
2 about meeting with the president was true. It means that the  
3 defendant kept doing what he'd been doing all along, right up  
4 until his arrest.

5 Now, there are a few other reasons why you know the  
6 defendant has continued to commit the crimes that he worked so  
7 hard to establish and build. And one of the reasons you know  
8 that, again, is his phone.

9 Now, the defendant may attempt to portray himself as a  
10 humble biomass business owner, but his phone contacts show that  
11 that is not the case. This is not the contacts list of a  
12 humble businessman. The defendant has a Who's Who of corrupt  
13 politicians and police in his contacts. He has the president  
14 of his country's cell phone number, and the vice president's  
15 cell phone number, and the former president's home number. He  
16 has the regional head of the anti-narcotics task force cell and  
17 home numbers, and as you've seen, nearly a dozen other  
18 high-level police, military, and political officials.

19 Now, I want to talk briefly about the defendant's  
20 admissions. As you know, the defendant gave an interview after  
21 his arrest in Miami, and you've seen some of the things that he  
22 said in that interview. We're not going to talk about them  
23 all; you've seen them recently, and I trust that you remember  
24 them.

25 I submit to you that the defendant attempted to

L3JKRAM2

Summation – Mr. Lockard

1 conceal his crimes from the DEA, but I also submit to you that  
2 the defendant was not as careful as he had hoped, and he made  
3 some key admissions that you should consider. One of those is  
4 Vaquero. The defendant admitted that he knew Vaquero, the  
5 hitman that he and Metro had hired to kill Pluto and had tried  
6 to hire to kill the Cachiros. He admitted that he knew Vaquero  
7 was a hitman, and he said that Vaquero had threatened his own  
8 family, and that the defendant had spoken to Metro about that  
9 threat.

10 Ladies and gentlemen, the defendant admitted that he  
11 had a dispute with a narcotics sicario and that he went to a  
12 narco-trafficker to address that threat.

13 The defendant also admitted that he knew Pluto, and  
14 that he knew his real name, Edgar, and that Pluto, too, was a  
15 drug trafficker.

16 The defendant admitted that he knew Chepe Handal. He  
17 knew him so well, he calls him Chepito. This is the drug  
18 trafficker that the defendant partnered with in his cocaine  
19 laboratory. This is the drug trafficker whose contacts were  
20 used to tip the defendant off about the raid. And the  
21 defendant tried to claim that everybody knows Chepito, but I'll  
22 submit to you that not everybody knows Chepito the way the  
23 defendant does. And the defendant admitted that he was  
24 introduced to the Cachiros by Metro, just like you learned  
25 through other evidence in this trial.

L3JKRAM2

Summation - Mr. Lockard

1           Now, ladies and gentlemen, you know that the events  
2           that we've talked about this morning have happened because  
3           you've heard about them from the witnesses, you've seen the  
4           evidence, the defendant himself has admitted critical facts  
5           about his crimes, and that evidence proves the defendant's  
6           guilt beyond a reasonable doubt. I'm going to turn to one more  
7           argument that I expect you may hear from defense counsel, and  
8           with this argument and any others that I've talked about, it's  
9           important to remember that the defendant is not required to  
10          make any arguments at all, not required to introduce any  
11          evidence, not required to cross-examine any witnesses, and  
12          that's because the burden always rests with the government, as  
13          it should, but if the defendant does choose to make arguments,  
14          then you're entitled to examine those arguments, and you're  
15          entitled to view them in the light of the evidence and in the  
16          light of your common sense, and when you do, I submit to you  
17          that you will find that the defendant's arguments don't make  
18          any sense.

19                I expect that the defendant will suggest to you that  
20                you should just not believe the evidence, that you should not  
21                believe the witnesses who've testified. I expect the defendant  
22                may ask you to conclude that those witnesses lied, to believe  
23                that Leonel Rivera simply invented meetings, discussions, and  
24                phone calls, to believe that he made up one and a half tons in  
25                cocaine transactions, that he made up murders, to believe that

L3JKRAM2

Summation - Mr. Lockard

1 Leonel Rivera falsely confessed to his own attempted murder. I  
2 submit that you know that that doesn't make any sense. It  
3 doesn't make any sense to falsely confess to an attempted  
4 murder. And you also know, because you've heard, that Leonel  
5 Rivera has cooperated extensively since before his surrender  
6 and after his surrender. You've heard how he's cooperated  
7 extensively against corrupt Honduras presidents, members of  
8 congress, police officers, cartel leaders. He has testified in  
9 other cases. And you know there is no reason for Leonel Rivera  
10 to just make up stories about Geovanny Fuentes Ramirez.

11 I believe you may be asked to believe that José  
12 Sanchez, the accountant, is also lying, that he made up stories  
13 about meetings between the defendant and the President of  
14 Honduras about drug labs and about bribes, that he falsely  
15 admitted to helping the defendant to launder money. You  
16 already know that Mr. Sanchez never wanted to have to flee his  
17 country, to have to leave his home and his profession behind.  
18 He never wanted to witness the things that he witnessed.  
19 There's no reason for Mr. Sanchez to invent stories about the  
20 defendant.

21 So, ladies and gentlemen, you know that that argument  
22 doesn't make any sense. It's just beyond belief that so many  
23 witnesses would decide to lie about the defendant, and you've  
24 seen them testify, and you know that they testified credibly  
25 and consistently, and were corroborated by the other witnesses

L3JKRAM2

Summation – Mr. Lockard

1 and by the evidence. We've reviewed a bunch of that this  
2 morning. There's no need to go through it again. You saw it  
3 during this trial.

4 So now let me talk for a moment about how that  
5 evidence demonstrates the elements of the charges. There are  
6 three charges: Conspiracy to violate the narcotics laws,  
7 violating the U.S. firearms laws, and conspiring to commit a  
8 firearms offense.

9 Now, I expect Judge Castel will instruct that you  
10 Count One has two elements – the existence of an agreement to  
11 violate the U.S. drug laws and that the defendant knowingly and  
12 intentionally associated himself with and joined in that  
13 agreement. And I also expect that the Court will instruct you  
14 that you will be asked to find whether that agreement involved  
15 cocaine and whether it involved at least five kilograms of  
16 cocaine.

17 The conspiracy in Count One has three alleged objects,  
18 and as I expect you'll be instructed, you need only find one of  
19 them, but you must be unanimous about which one, but I submit  
20 that the evidence demonstrates all three of the objects. The  
21 first is to import cocaine into the United States; the second  
22 is to manufacture or distribute cocaine, knowing or intending  
23 that it would be imported into the United States; and the third  
24 is to possess cocaine onboard an aircraft registered in the  
25 United States, intending to distribute it.

L3JKRAM2

Summation – Mr. Lockard

1           The first two objects, importing cocaine and  
2 manufacturing or distributing cocaine knowing or intending that  
3 it will be imported into the U.S., are shown by the  
4 overwhelming evidence of the defendant's participation in a  
5 large-scale and wide-ranging narco-trafficking conspiracy.  
6 That conspiracy included his drug lab in Cerro Negro, where he  
7 manufactured and distributed cocaine. It included his  
8 protecting and transporting shipments of cocaine by others. It  
9 included importing and selling cocaine on his own account,  
10 cocaine from South America, and sold to buyers in Guatemala and  
11 Mexico.

12           And not only did the defendant conspire to manufacture  
13 and distribute cocaine, he knew full well that it was destined  
14 for the United States. He started his drug-dealing by sending  
15 cocaine from Honduras to Miami. When he was working in  
16 Honduras, he sold to Guatemalan and Mexican buyers, the same  
17 buyers that, as Leonel Rivera told you, distributed that  
18 cocaine further north, through Mexico, and into the United  
19 States. The defendant was paid in U.S. dollars, the dollars  
20 that U.S. drug users pay when it's distributed on the streets.

21           You've heard expert witness testimony that more than  
22 90 percent of cocaine trafficked through Central America is  
23 destined for the United States. And you've heard how President  
24 Hernandez, the defendant's coconspirator, laughed about how  
25 they would shove cocaine up the gringos' noses, up the noses of

L3JKRAM2

Summation – Mr. Lockard

1 the Americans.

2 For the third object, I'm going to remind you about  
3 one of the airplane shipments that the defendant protected, a  
4 shipment of cocaine that came from South America to Honduras.  
5 Now, I expect Judge Castel will instruct you that you do not  
6 need to find that the defendant knew that the airplane was  
7 registered in the United States, just that a U.S.-registered  
8 aircraft was used or was intended to be used. And you heard  
9 evidence of how the defendant received airplane shipments of  
10 cocaine to be transported to Guatemala for the Mexican buyers  
11 and provided security for the arrival and transportation.

12 The airplanes that the trafficker, Jack, used, as you  
13 heard, were all U.S.-registered airplanes, and they all had the  
14 November registration number, the registration that begins with  
15 the letter N. And that, I submit, establishes Count Three or  
16 object three of Count One.

17 And, finally, with respect to drug type and drug  
18 quantity, the evidence establishes that at least five kilograms  
19 of cocaine were involved in the conspiracy, and, in fact, you  
20 know that it involved tons, tons of cocaine. Every shipment  
21 that the defendant protected or imported was in the hundreds or  
22 thousands of kilograms of cocaine.

23 I'll turn now to Count Two, where I expect, again,  
24 that Judge Castel will instruct you that there are two  
25 elements – one, that the defendant committed the



L3JKRAM2

Summation - Mr. Lockard

1 drug-trafficking offense charged in Count One; and, Two, that  
2 the defendant knowingly used or carried a firearm during and in  
3 relation to the drug-trafficking crime or possessed a firearm  
4 in furtherance of the drug-trafficking crime, or aided and  
5 abetted another in such using, carrying, or possessing of a  
6 firearm.

7 We've already talked about the first element, the  
8 drug-trafficking offense, and I submit to you that the second  
9 element is shown by overwhelming evidence that the defendant  
10 used, carried, and possessed firearms during and in relation to  
11 that narco-trafficking activity and in furtherance of it. You  
12 know that, for one thing, because he had a license to carry  
13 certain weapons, although, certainly, not all of the weapons  
14 were licensed.

15 Now, I think you've heard suggestion at various points  
16 in this trial that a licensed weapon is a legitimate weapon,  
17 but you know that's not true. A license to possess a firearm  
18 is no excuse to use that firearm in furtherance of drug  
19 trafficking or murder. If a drug trafficker uses and carries a  
20 gun, licensed or not, in furtherance of crime, that is also a  
21 crime. You've heard evidence of how the defendant was always  
22 armed, he was armed at every meeting to discuss drug  
23 trafficking, meetings to discuss law enforcement  
24 investigations, meetings to discuss murders. You've heard  
25 evidence of how he was always armed receiving and transporting

L3JKRAM2

Summation – Mr. Lockard

1 cocaine, and how the defendant admitted that he used his  
2 firearms to murder people in furtherance of the drug  
3 conspiracy, murders of police officers to quash investigations  
4 that would disrupt the trafficking, the murder of another  
5 person to promote himself with his drug-trafficking partners,  
6 the murder of two hitmen who had assassinated one of his  
7 partner's family members over a drug debt, and each of those  
8 occasions, the defendant admitted to his partners that he  
9 personally had carried and used his firearms.

10 You'll also be asked to find whether the firearm that  
11 the defendant used, carried, or possessed included a machine  
12 gun and if it included a destructive device. And I expect you  
13 will be told that a machine gun is a firearm that automatically  
14 shoots more than one shot with a single depression of the  
15 trigger, and that a destructive device includes an explosive  
16 grenade, and you've heard about both of those in this trial.

17 You've heard about the defendant's modified Glock that  
18 has a selector switch that allows it to automatically fire  
19 burst rounds with one depression of the trigger. You've heard  
20 about the grenade launcher that fires 40-millimeter grenades  
21 that explode on impact. And you've heard how the defendant  
22 used the grenade launcher, how he described to Leonel Rivera  
23 how it would be deployed in the event of an attack on a truck  
24 carrying cocaine. And I expect you'll also be instructed that  
25 referring to a machine gun or a destructive device so that

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Summation – Mr. Lockard

1 others present will know that it's available if needed can  
2 constitute the use of that machine gun or destructive device,  
3 and the defendant's telling other people about his grenade  
4 launcher and how he would use it is just such a use.

5 And the defendant also aided and abetted others in  
6 using, carrying, and possessing firearms, including machine  
7 guns and grenade launchers, and I expect Judge Castel will  
8 instruct you that if you find that the defendant actively  
9 participated in the drug-trafficking crime charged in Count One  
10 and had advance knowledge that another participant in the crime  
11 would use or carry a machine gun or a destructive device during  
12 and in relation to, or in furtherance of that crime, then the  
13 defendant has aided and abetted that other person.

14 Here, the defendant trafficked cocaine with many, many  
15 others that he knew to be armed with semiautomatic pistols,  
16 AR-15s, AK-47s, and grenade launchers. He trafficked with  
17 Metro, who was always armed and always had armed security. He  
18 trafficked with Leonel Rivera, who was always armed and who  
19 always had armed security, including, as he told you, machine  
20 guns and grenade launchers.

21 The defendant's participation in drug-trafficking  
22 activity with people that he knew to be armed, and to be armed  
23 in furtherance of the drug-trafficking conspiracy, amounts to  
24 aiding and abetting.

25 The last count, Count Three, charges a conspiracy to

L3JKRAM2

Summation – Mr. Lockard

1 violate the U.S. gun laws, and I expect Judge Castel will  
2 instruct you that that offense has two elements, just like  
3 Count One does – the existence of the agreement to violate the  
4 gun laws, and that the defendant knowingly and intentionally  
5 associated himself with and joined in that conspiracy, and the  
6 object of that conspiracy is the same as what we just talked  
7 about with Count Two.

8 Now, one final word about venue: I expect you will be  
9 told that the law provides that certain acts done or committed  
10 outside the territorial jurisdiction of the United States are  
11 chargeable under U.S. law, and that venue for those crimes is  
12 established if you find that the point of entry where any  
13 coconspirator of the defendant was first brought into the  
14 United States was the Southern District of New York.

15 So, for example, if you find that one of the  
16 defendant's coconspirators was first brought into the United  
17 States in this district, then venue would be appropriate in  
18 this district for the defendant. And you saw that a number of  
19 the defendant's coconspirators were first brought to the  
20 Southern District of New York, and that was Government  
21 Exhibit 504. You saw that Leonel Rivera, who the defendant  
22 trafficked about one and a half tons of cocaine with, was first  
23 brought to the Southern District. Renteria, the supplier of  
24 most of that cocaine, was also first brought in the Southern  
25 District. Avila Meza, the corrupt Honduran police officer who

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Summation – Mr. Lockard

1 participated in the murder of the two hitmen, was first brought  
2 in this district. Fredy Najera, the Honduran congressman whose  
3 airstrip was used to land one of the shipments of cocaine that  
4 the defendant transported to the Valles, he was first brought  
5 to this district. And you heard how other drug traffickers who  
6 worked with the Cachiros have also been first brought to this  
7 district – Hector Emilio Fernandez Sosa, Victor Diaz-Morales,  
8 and Fabio Porfiro Sosa – all who are coconspirators with Leonel  
9 Rivera and all of whom first arrived in this district.

10 If you find that any one of those is a coconspirator  
11 of the defendant's, then you may find venue.

12 Okay, we're at the end now. You've been through two  
13 weeks of trial, two weeks of unusual circumstances, and now  
14 you've been through a little bit more than an hour of  
15 summation, and so in a couple of minutes, I'm going to sit  
16 down. Then you'll hear from Mr. Moskowitz, for the defense,  
17 and after Mr. Moskowitz is finished, my colleague,  
18 Mr. Gutwillig, will have an opportunity to speak to you for  
19 just a little bit more before you receive your instructions  
20 from the Judge and begin your deliberations.

21 So, before I leave you, I would like to remind you of  
22 three things that Mr. Gutwillig asked you to do at the  
23 beginning of this trial: First, he asked you to pay close  
24 attention to the evidence. And, ladies and gentlemen, I know  
25 that you absolutely have done that, and I thank you for the

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Summation – Mr. Lockard

1 close attention that you've paid.

2 Second, Mr. Gutwillig asked you to follow the Judge's  
3 instructions on the law, and I know you'll do that as well. I  
4 know that you followed the instructions you've received so far  
5 and will follow the instructions that you're given in your  
6 deliberations.

7 And, third, Mr. Gutwillig asked you to use your common  
8 sense. And now that you've paid close attention to the  
9 evidence, and after you've heard Judge Castel's instructions on  
10 the law, and when you apply your common sense, I submit to you  
11 that you will be led inescapably to one conclusion – that the  
12 evidence shows that Geovanny Fuentes Ramirez conspired to  
13 traffic in tons of cocaine bound for the United States, and  
14 that he used guns and violence to do so, that he conspired to  
15 violate U.S. narcotics laws, that he carried, used, and  
16 possessed weapons, including machine guns and grenade  
17 launchers, in furtherance of that conspiracy, and that he  
18 conspired to carry, use, and possess firearms in furtherance of  
19 that conspiracy, that Fuentes Ramirez is guilty of the crimes  
20 charged beyond a reasonable doubt.

21 Thank you.

22 THE COURT: All right.

23 Ladies and gentlemen, let's take a ten-minute break,  
24 and we'll give Mr. Moskowitz an opportunity to set up for his  
25 closing arguments.

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Summation - Mr. Lockard

1 Remember, do not discuss the case among yourselves or  
2 with anyone. There's more to be heard. Still keep an open  
3 mind. You haven't heard the defense closing argument, and you  
4 haven't heard my instructions on the law. See you in ten  
5 minutes.

6 Please wait for the jurors to exit the floor before  
7 leaving the courtroom.

8 (Continued on next page)

L3JKRAM2

Summation – Mr. Lockard

1 (Jury not present)

2 THE COURT: There's a note that reads: "Please tell  
3 the lawyers to speak louder. Thank you." We'll have it marked  
4 as the next court exhibit.

5 MR. MOSKOWITZ: I promise, your Honor, that won't be a  
6 problem.

7 THE COURT: I didn't think it would, Mr. Moskowitz. I  
8 didn't think it would. The reality is that we have a HEPA  
9 filter running, and we have the ventilation system running,  
10 and, quite appropriately, we have an interpreter speaking into  
11 a microphone softly, but speaking. The combination of the  
12 foregoing has, at all times during this trial, required people  
13 to speak up.

14 (Pause)

15 THE COURT: Okay. We're in recess.

16 (Continued on next page)

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L3JKRAM2

Mr. Moskowitz - Summation

1 (Recess)

2 THE COURT: All right. Anytime you're ready,  
3 Mr. Moskowitz.

4 MR. MOSKOWITZ: Thank you, your Honor.

5 May it please the Court, Judge Castel, members of the  
6 prosecution, ladies and gentlemen of the jury:

7 I'd like you to imagine the following nightmare  
8 scenario. Imagine you're coming home from a business trip or a  
9 vacation abroad, you're in a country where you don't speak the  
10 language, you get to the airport, and you are arrested by the  
11 local police, or the government police. And they tell you that  
12 you're being charged with crimes that could put you in jail for  
13 the rest of your life. You're scared and confused. And you  
14 ask, who's accusing me of these terrible crimes? And the  
15 answer to the question that you get sends a chill down your  
16 spine. The police officer tells you: Your accuser is Leonel  
17 Rivera, one of the 21st Century's most significant drug  
18 traffickers and a mass murderer on a scale that none of us have  
19 really ever experienced, I'm sure, a man who's admitted to  
20 murdering 78 people. That, ladies and gentlemen, is the  
21 nightmare that Geovanny Fuentes Ramirez faced a little bit more  
22 than a year ago today. And he is the one that is facing the  
23 evidence and the story that was put together by Leonel Rivera.  
24 And you have the power to end that nightmare for him.

25 Ladies and gentlemen, during the jury selection, and

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Mr. Moskowitz - Summation

1 again before the case started, and then at various points  
2 throughout the trial, the Judge told you that in our criminal  
3 justice system, the defendant is presumed innocent, and that  
4 the government has the burden of proving a defendant's guilt  
5 beyond a reasonable doubt. And all of you have to be  
6 unanimously convinced that the government's evidence is  
7 sufficient beyond a reasonable doubt.

8 Now, the concepts of the presumption of innocence and  
9 the burden of proof beyond a reasonable doubt, you've probably  
10 all heard them before - certainly if you watch any police  
11 procedurals, you've heard that before - but they're not empty  
12 concepts, and they're not mere platitudes. They are the  
13 bedrock principles on which our criminal justice system exists.  
14 They are what make our criminal justice system the envy of  
15 countries around the world. Those two concepts - the  
16 presumption of innocence and the burden of proof - protect us  
17 all from the awesome powers of the government and from people  
18 who might choose to accuse us falsely of things that we didn't  
19 do. And those two concepts - the presumption of innocence and  
20 the burden of proof beyond a reasonable doubt - is what  
21 protects Geovanny here in this courtroom.

22 In this case, as we're going to talk about going  
23 forward, you will, I am sure, conclude that the government has  
24 failed to overcome the presumption of innocence, and has failed  
25 to prove Geovanny's guilt on any of the charges beyond a

L3JKRAM2

Mr. Moskowitz - Summation

1 reasonable doubt.

2 Now, where is the reasonable doubt in this case? I'm  
3 not going to discuss with you the legal definition of  
4 reasonable doubt - Judge Castel will do that in some great  
5 detail in his jury instructions - but you'll get the idea. In  
6 determining whether there is reasonable doubt in this case, the  
7 obvious place to start is with the government's star witness,  
8 Leonel Rivera.

9 Now, as I was sitting listening to Mr. Lockard's  
10 summation, something struck me. He told you a story, he told  
11 you a story of what he claims happened and who did what. But  
12 what you didn't hear coming out of his mouth was, Leonel Rivera  
13 told you this story, this is a story authored by Leonel Rivera,  
14 with maybe some edits by a couple of other witnesses and some  
15 footnotes by a couple of other witnesses. But Leonel Rivera is  
16 the key to their case, and if he is not believed, there is  
17 reasonable doubt. And there is a lot of reason not to believe  
18 Leonel Rivera.

19 Now, let's start with what we know about him. He is  
20 one of the world's most significant drug traffickers. By his  
21 own admission from the witness stand, he trafficked more than a  
22 hundred tons of cocaine into the United States. Now, of  
23 course, that's not necessarily what he said under oath when  
24 asked about it in another case, but we'll get to that.

25 He made over \$50 million trafficking cocaine. He

L3JKRAM2

Mr. Moskowitz - Summation

1 murdered 78 people - men, women, children, high-ranking  
2 government officials, his own family members. He murdered or  
3 participated in the murder of five people while he was  
4 negotiating, cooperating with the government. It's  
5 astonishing. On the one hand, he's going to the United States  
6 Government and says I want to come in, I want to cooperate with  
7 you, and while he's doing that, he's murdering four people  
8 between October 30th and the end of November, and then another  
9 one where he provides information to a drug trafficker and the  
10 guy gets killed - Alex Berrios, you remember him. All of that  
11 while involved in negotiations with our government.

12 It's unbelievable. That man has got to be the most  
13 vial, despicable person that any of us has ever encountered in  
14 any walk of life. And that's who the government put on the  
15 witness stand and asked you to believe beyond a reasonable  
16 doubt. That man has no morals, he has no scruples, and he  
17 probably has no soul, and I submit to you, he can't be believed  
18 about anything beyond a reasonable doubt.

19 But you don't have to rely on my describing his  
20 character to find reasonable doubt. You can base your  
21 reasonable doubt on his own testimony. What am I talking  
22 about? He got on the stand, and he admitted to you that while  
23 he was cooperating with the government, while he was being  
24 debriefed, while he was telling the government why they should  
25 sign him up for a cooperation agreement, he lied to them for

L3JKRAM2

Mr. Moskowitz - Summation

1 months, and months, and months, repeatedly, without getting  
2 caught. What does that tell you? He's a really good liar. He  
3 lied to these people, he lied to their colleagues, with  
4 impunity. And then he claims that one day he decided, you know  
5 what, I'm going to have a conversation with my lawyer, and,  
6 poof, now I'm going to tell the truth.

7 Can we see Defense Exhibit A on the screen, please.  
8 Second page, please. Yes, the next one.

9 That's the proffer agreement. That's the agreement  
10 that covered the preliminary meetings when Mr. Rivera was  
11 negotiating for his cooperation agreement. And you remember,  
12 we went through it, there's -- I think, if my count is right,  
13 there are about 19 or 20 meetings, he initialed it each time,  
14 and each time he's told, you have to tell the truth, and he  
15 quibbled with me about, well, is withholding information the  
16 same thing as lying? Did I get that warning, did I not get  
17 that warning? We all know what the truth is. The truth is the  
18 truth; you either tell the truth or you don't tell the truth.  
19 If something happened, and you tell about two people who were  
20 there, and you don't tell about the third, that's not the  
21 truth. He doesn't know what the truth is.

22 And then I asked him, okay, you said at some point,  
23 you stopped lying, can you tell me when in the process of these  
24 20 meetings you stopped lying? When did you have this  
25 revelation that it's time to tell the truth? His answer was:

L3JKRAM2

Mr. Moskowitz - Summation

1 I don't know, I don't remember.

2 So I asked him: Okay, when you finally signed your  
3 cooperation agreement in April of 2016, by then, had you  
4 stopped lying?

5 And he said: Yes, by then, I stopped lying.

6 But we know that's not true. How do we know that's  
7 not true? Because twice, in this courthouse, under oath, he  
8 lied, and he lied about stupid things. He was asked from the  
9 witness stand: How much cocaine did you traffic? What's your  
10 best estimate?

11 And he said: Twenty tons or more. We know it's a  
12 hundred tons or more. And he knew that. But for whatever  
13 reason, he didn't want to give that up at that time. He  
14 testified under oath, and he couldn't tell the truth.

15 When else did he lie? He was asked a question about  
16 his family and were they involved in his drug-trafficking  
17 conspiracy. And what did he say under oath? I don't remember.  
18 Really? You're in business with your family, your father, your  
19 mother, your brothers, and you don't remember if they're  
20 involved in the drug-trafficking conspiracy? Ridiculous.

21 (Continued on next page)

22

23

24

25

L3JHRAM3

Summation - Mr. Moskowitz

1 MR. MOSKOWITZ: (Continued) That's what he said under  
2 oath after he signed his cooperation agreement. But you know  
3 what? He got away with it, and that just emboldened him. He  
4 didn't have his cooperation ripped up. The prosecutors didn't  
5 say: You lied under oath. That's it. You're done. We're  
6 finished with you. No, they trotted him out again here to tell  
7 his stories, to weave his fiction. Unbelievable.

8 He says he didn't remember when he stopped lying or  
9 when he -- or whether his family was in the drug trafficking  
10 business with him. So that would make you think maybe his  
11 memory's really bad. But, you know, one of the things that I'm  
12 sure you realized was how different Mr. Rivera's testimony was  
13 on direct and on cross. On direct examination he had  
14 incredible recall of conversations that took place in 2009, he  
15 says, or 2010. He remembered exactly what he claims Geovanny  
16 said to him and what Metro said to him in specific detail. Not  
17 only did he remember the conversations, he could tell you where  
18 they happened; he could tell you what gun everybody had. I'm  
19 carrying a semiautomatic. He's carrying an AK-47. He's  
20 carrying an AR-15. Specific details about events 11 years ago.

21 On cross-examination a completely different story. He  
22 couldn't remember anything. His memory disappeared. He  
23 couldn't remember the details of murders he committed. When  
24 you asked him about the murders he committed: I'm sorry. I  
25 don't remember. When you asked him what he told the government

L3JHRAM3

Summation - Mr. Moskowitz

1 about the murders he committed, he couldn't remember, and those  
2 events are a lot closer than the random events he's claiming he  
3 remembers of a drug deal he did 11 years ago. The murders he  
4 can't remember; the drug deals with Geovanny, those he  
5 remembers. The conversations, he remembers.

6 What else couldn't he remember? He couldn't remember  
7 whether he told different versions of the same event to the  
8 prosecutors when he was being debriefed. Every time he gets  
9 confronted: Sorry, I don't remember." Show him things to  
10 refresh his recollection: Sorry, doesn't refresh my  
11 recollection. Completely don't recall.

12 Perhaps most tellingly, he told you he couldn't  
13 remember anything about the very first meeting he had with the  
14 DEA representatives of the United States government. I want  
15 you to picture this. You are a longtime drug trafficker.  
16 You're a multi-millionaire. You're living the life of luxury.  
17 You've got armed bodyguards. You are the king of the hill as  
18 far as drug trafficking in Honduras, and suddenly you decide  
19 I'm going to turn myself in or I'm going to consider turning  
20 myself in to the United States government. I'm going to  
21 arrange a meeting and go talk with them and see if we could  
22 work out a deal. You have to imagine, imagine in your own  
23 lives an event that seismic. Your whole world from before is  
24 going to change. You're going to go from a multi-millionaire,  
25 king of the hill to a prisoner in a United States jail. You're



L3JHRAM3

Summation - Mr. Moskowitz

1 about -- you're transitioning towards that. You would think  
2 that first meeting would be burned in Leonel Rivera's memory.  
3 He couldn't give you the most simple details of that meeting.  
4 Remembered barely approximately when it took place, although we  
5 know it took place in November of 2013. Couldn't remember  
6 whether it took place in Honduras or in Belize, couldn't  
7 remember the names of any of the agents that he spoke to.

8 Really? An event that important in his life and he  
9 wouldn't give you a single detail about it. Do you really  
10 believe he didn't remember it or he just didn't want to talk  
11 about it? Was he telling the truth or was he lying? Is his  
12 memory completely shot or was he just lying and playing games  
13 with you?

14 You know what else he couldn't tell you that I found  
15 astonishing and I'm sure many of you will? He told you that he  
16 surrenders to the United States in 2015, January 2015, and he  
17 is really worried about the family that he's left behind, his  
18 wife, his children. So I asked him: So when did they get  
19 here? No idea. Which family members are here? Can't  
20 remember. Those little lies, those refusals to give you the  
21 very basic facts that you know he knows tells you he was  
22 playing games from that witness stand and that you can't  
23 believe him.

24 Another stark indicator that Leonel Rivera can't be  
25 believed is just the difference in his demeanor between direct

L3JHRAM3

Summation - Mr. Moskowitz

1 and cross and redirect. Now, maybe I'm a little bit more  
2 sensitive to it because this is what I do for a living, but  
3 we're all watching people to try to determine, are they telling  
4 us the truth or not? On direct examination he was respectful,  
5 he was responsive: "Yes, sir"; "no, sir." "Can you repeat the  
6 question? I didn't quite understand it." He gave answers to  
7 the questions that he practiced giving with the government.

8 But on cross-examination the real Leonel Rivera showed  
9 up, the drug-dealing murdering Leonel Rivera, the one for whom  
10 rules and the law don't mean anything. On cross-examination  
11 did a couple of things. First of all, couldn't remember  
12 anything, and second of all, regardless of what the question  
13 was, what did he say? Oh, I did it just like your client did.  
14 Or, yes, I'm responsible, but so your client. Or the corrupt  
15 politicians helped me do it. None of that was relevant, but he  
16 had a script. He had a point. He wasn't here as an objective  
17 witness. He wasn't here to tell you what happened. He was  
18 here to tell you and sell you his fiction. He was here to bury  
19 Geovanny, and he wasn't going to let my questions get in his  
20 way. And remember, he knew -- by the time he got on that  
21 witness stand, he knew that he could lie under oath and get  
22 away with it because he had already done it twice.

23 So now let's spend a little time just looking at some  
24 of the details in Mr. Rivera's story that don't make sense and  
25 why you should -- why the substance of his testimony should not

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Summation - Mr. Moskowitz

1 be believed.

2 Now, throughout the trial you heard testimony that Los  
3 Cachiros, the drug trafficking organization headed by Leonel  
4 Rivera and Javier Rivera, was one of the most powerful drug  
5 trafficking organizations in the world. Leonel Rivera told you  
6 that he bribed the last three or four presidents of Honduras,  
7 that he paid millions of dollars in bribes to get protection  
8 from the highest levels of government, protection against  
9 arrest and protection against extradition. You also heard that  
10 he had bribed countless police officers and other politicians  
11 and military people. He had so much money he could just give  
12 it out, bribe here, bribe there. Millions of dollars he paid  
13 to bribe the presidents of Honduras for protection, and yet he  
14 wants you to believe that in 2010 he decided he needed  
15 Geovanny -- Geovanny's police contacts. This is a guy who told  
16 you that between 2009 and 2013, when he owned President Lobo  
17 Sosa because he had bribed him with \$500,000, or something like  
18 that, and he had a deal where President Sosa's son accompanied  
19 every drug shipment that he brought into the country -- that's  
20 what he told you. I asked him: Were there times he didn't go  
21 with you that you just kind of gave him notice that it was  
22 coming? He said: No, he rode with me every single time. And  
23 what did he tell you about what happened when the president's  
24 son was riding with him? They got through a checkpoint. The  
25 president's son told his people: Put on your sirens. He

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Summation - Mr. Moskowitz

1 rolled down his window. He gave them a salute, and they were  
2 let through. When you have that kind of clout, when you have  
3 that kind of weight, are you going to pick, you know, go --  
4 claim that you need the police contacts of somebody that you  
5 don't know? You're going to bring them into the business?  
6 Really? Does that make any sense at all?

7 But you know what else doesn't make any sense? It  
8 doesn't make any sense that Mr. Fuentes, who according to  
9 Leonel had been selling cocaine in Miami, was starting a  
10 cocaine lab, it doesn't make any sense that Mr. Fuentes would  
11 kill a boat mechanic who happened -- he happened to hear stole  
12 some money from Leonel Rivera and that he would do it without  
13 even asking Leonel whether he wants him to. First of all, it's  
14 hard to believe -- we're talking about Leonel Rivera here, OK,  
15 guy does 78 murders -- he's going to let some little boat  
16 mechanic rip him off and not pay the price? You think he's  
17 going to wait? You think Leonel is going to wait for Geovanny  
18 to volunteer to take him out? Really? For months he's going  
19 to let that guy think he can steal from Leonel Rivera? Doesn't  
20 make any sense.

21 What else doesn't make any sense is according to  
22 Leonel Rivera, Geovanny was -- had opened a cocaine lab, was  
23 bringing in cocaine base from Colombia, had his own business.  
24 Why is he going to go work as a security guard transporting  
25 cocaine, somebody else's cocaine, for a few bucks from Leonel

L3JHRAM3

Summation - Mr. Moskowitz

1 Rivera? Does it make any sense to you? He says, oh, he's got  
2 his own business. What I'm going to go -- I'm going to go work  
3 overtime as a security guard? Doesn't make any sense.

4 Now, here's another way you can tell that Leo was  
5 lying.

6 Could we see Exhibit 15 up on the board.

7 Now, I'm sure this morning when Exhibit 15 was put up  
8 on the board -- the page with the text, please -- I'm sure when  
9 Government Exhibit 15 was put up on the board this morning and  
10 I read it to you, you're thinking to yourself, what's that all  
11 about? Well, I want you to compare the statements here with  
12 Leo's testimony about the same events at this trial. OK.  
13 First of all, if you read the document, what you see is he's  
14 saying Metro paid Vaquero to kill Pluto. He learned about the  
15 murder of the police officer from Valladares and that Metro  
16 killed the police officer. He told you that -- and this is the  
17 most important one, really, because it just -- it also gives  
18 you a little bit of information about Geovanny that Leonel  
19 didn't want to admit to you.

20 Look at the last one. Remember what Leonel said at  
21 trial? Leonel said at trial that he hired Vaquero to kill  
22 Metro and to kill Geovanny, and that what happened was Vaquero  
23 took his sicarios to Geovanny's house, there was a firefight,  
24 some of his men got hit, and Vaquero withdrew and, poof, after  
25 that there's peace between Geovanny and Leonel. But what did

L3JHRAM3

Summation - Mr. Moskowitz

1 Leonel tell the government in the secret of their offices that  
2 he wouldn't admit from the stand? On his own, Vaquero tried to  
3 kill Geovanny Fuentes. Vaquero said he was at a horse race and  
4 killed someone, and Geovanny Fuentes called the police.  
5 Vaquero went to jail for two or three years. After Vaquero was  
6 released and Vaquero killed Metro, Vaquero tried to kill  
7 Geovanny Fuentes. That's not the story that you heard from  
8 Leonel Rivera on the witness stand. That's not the story he'd  
9 even admit telling the government when I confronted him about  
10 it, but that's what he told the government.

11 With that lie alone, with that alone can you believe  
12 anything else that Leonel Rivera told you about Geovanny  
13 Fuentes? Vaquero had his own reasons to kill Geovanny, at  
14 least that's what Leonel told the government. What were those  
15 reasons? Geovanny called the cops on him and he went to jail  
16 for two or three years. What self-respecting drug dealer is  
17 going to call the cops on one of his sicarios? That's what  
18 Leonel said he was, that Vaquero worked for Geovanny. How  
19 absurd is his testimony from the witness stand in light of that  
20 statement?

21 Another fact that just doesn't make sense -- and let  
22 me just suggest something to you. You know, a trial is like a  
23 puzzle. You've got to try to see if the pieces fit. If at the  
24 end of the trial you're left with a bunch of pieces that don't  
25 fit, that's reasonable doubt. They tell you things and it

L3JHRAM3

Summation - Mr. Moskowitz

1 doesn't make any sense, that's reasonable doubt.

2           So what else is reasonable doubt? Leonel would like  
3 you to believe that after years of working -- couple years of  
4 working with Mr. Fuentes and paying him money, that Geovanny  
5 decided he wants to kill Leonel and Javier because he wouldn't  
6 invest in a drug deal. Does that make any sense at all?  
7 According to Leonel, according to the government, Geovanny,  
8 because he was working for Leonel, had all these contacts with  
9 all the other drug dealers that he was dropping drugs off at.  
10 He knew the Valles. He knew the other guys, Hector Emilio. If  
11 there's a cocaine deal to be made and the Cachiros don't want  
12 it, you go down the block to the next drug dealer. You don't  
13 say, you know what? You don't want to invest a million bucks  
14 with me. I'm going to kill you. That makes no sense. There's  
15 no logic to it because it didn't happen.

16           And by the way, if Geovanny -- according to the  
17 government, if Geovanny needed money, he knew where he could  
18 go. He had a sugar daddy. He had Fuad Jarufe, according to  
19 the government. He could go to him: Listen, I have a business  
20 proposition. Could you lend me some money? Doesn't make sense  
21 that a guy who was, even by Leonel's account, a nobody, a  
22 little guy compared to Leonel, would decide, you know, I'm  
23 going to take out the head of the Cachiros because he won't  
24 lend me some money. That story doesn't make any sense.

25           What else doesn't make sense? Leonel wants you to

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Summation - Mr. Moskowitz

1 believe and the government wants you to believe that Geovanny  
2 gets arrested and he meets Leonel in prison after Leonel had  
3 already testified against various narco-traffickers, after he  
4 had testified against Tony Hernandez, after his name was all  
5 out on the Internet as a government cooperating witness, that  
6 he runs into him in prison and he immediately decides, you know  
7 what? I'm going to make some incriminating statements to you.  
8 Sure, let me tell you about my deal with Juan Orlando  
9 Hernandez. Really? Really? In some real world does that  
10 actually happen or is that a fiction that Leonel made up? And  
11 keep in mind, Leonel told you Geovanny knew. Geovanny said to  
12 him: I know you're cooperating against me. So, of course, the  
13 next statement is going to be: Let me tell you about -- let me  
14 give you some additional evidence against me. Does that story  
15 make any sense to you?

16 OK. Those are just a few examples of parts of  
17 Leonel's story that don't make any sense, but let's look for  
18 some additional reasonable doubt. If his character and lack of  
19 morality is not enough, if his repeated lying isn't enough, if  
20 the parts of his story that don't make sense isn't enough to  
21 give you reasonable doubt, let's consider the total lack of  
22 corroboration. You would think if the government is going to  
23 rely on somebody as evil as Leonel Rivera, they'd do their  
24 homework. They'd try to corroborate those parts of the story  
25 that they could.



L3JHRAM3

Summation - Mr. Moskowitz

1           Now, you have heard a lot about Agent Fairbanks and  
2 Agent Gonzalez about the DEA's limitations about getting  
3 information out of Honduras. OK. I can understand some things  
4 might be sensitive, but there was testimony about the ownership  
5 of the land in Cerro Negro. They claimed that it was owned by  
6 Geovanny at the time of the raid. Geovanny told you, you saw  
7 it on his postarrest statement, that it was Mr. Jarufe's  
8 property and that later, after the raid, it was given to him by  
9 Mr. Jarufe. Property ownership, land deeds, you would think  
10 that would be something that the DEA might be able to get if  
11 they tried just a little bit, but you didn't hear -- you  
12 certainly didn't see it and you didn't hear that "We went to  
13 the land registry case, and they wouldn't give us a copy of the  
14 deed." There's no effort, no real effort, to corroborate Leo.

15           All right. Let's put Honduras on the side for a  
16 minute. Leonel Rivera tells you that before he actually meets  
17 Geovanny, he's told that Geovanny and Metro had a deal where  
18 Metro was sending cocaine to Miami and Geovanny was collecting  
19 it in Miami and distributing it in small amounts. So what does  
20 that fact mean? It means Geovanny had to be in Miami to pick  
21 up the drugs, the kilos, the one to five kilos he's getting a  
22 month, break it up and sell it in small amounts. So if  
23 Geovanny is in the United States, what kind of evidence do you  
24 think the United States government might have on that? Do you  
25 think they might have records from border control of Geovanny

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Summation - Mr. Moskowitz

1 coming into the country? If he was here for an extended period  
2 of time, do you think there might be records as to when he came  
3 and when he left? Wouldn't you like to know or see or have  
4 proof that that part of the story is true? It's in the  
5 government's control. All they have to do is think about doing  
6 it, but they didn't. They didn't bring that to you. Would  
7 have been a small thing to give some credibility to Leo Rivera,  
8 but they didn't do it. They relied on Leo's fiction.

9 Now, you know that there are no audiotapes, there are  
10 no videotapes of Geovanny and Leo. There's no pictures of them  
11 together. There's no calls on Geovanny's phone to Leonel or  
12 Javier Rivera. There's no text messages. There's no WhatsApp  
13 chats. There's no emails. Indeed, the government failed to  
14 produce any documentary evidence of any actual contact between  
15 Geovanny and any of the alleged drug dealers who were part of  
16 this conspiracy or even any contacts between Geovanny and the  
17 politicians he supposedly owned. You saw he had numbers,  
18 people's phone numbers, in his phone, but what you didn't see  
19 were calls or texts or chats or emails or any actual contacts.

20 Now, in the absence of kind of documentary or physical  
21 corroboration, you might think maybe the government could call  
22 another witness. Well, let's see. Who might that be? We  
23 heard that Leonel Rivera and Javier Rivera came in out of the  
24 cold together. We heard Javier Rivera, the co-head of the  
25 Cachiros, is a cooperating witness. You would expect that he

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Summation - Mr. Moskowitz

1 might have something to say about whether Los Cachiros were in  
2 business with Geovanny Fuentes. But who's missing from this  
3 trial? Whose name do you barely ever hear? Javier Rivera.  
4 Javier Rivera, as despicable as he may be, may have been able  
5 to corroborate some of what Leonel said, you would think  
6 anyway. His absence here speaks volumes. The government  
7 didn't call him, and you can ask why. I suggest you should  
8 conclude they didn't call him because he wasn't going to  
9 corroborate Leonel. His absence is one of the elephants, one  
10 of the elephants in the room.

11 The government has contended, is going to contend,  
12 that Leonel has every incentive to tell the truth and no  
13 incentive to lie. That's not true. In a rational world, that  
14 should be true, but it's not true. Leonel's incentive is to  
15 get a letter from the government addressed to his sentencing  
16 judge which will allow the judge, allow the judge, not  
17 guarantee, but allow the judge to completely ignore the  
18 mandatory minimums. And he's facing, as he told you, life plus  
19 30 years mandatory minimum.

20 His only, only chance to get out of prison, to be a  
21 free man again, is to get that letter from the government. So  
22 he's going to do what he thinks the government wants him to do,  
23 truth be damned. We know -- again, I hate to beat this dead  
24 horse -- but we know he doesn't care about lying under oath  
25 because he's done it twice already, and he got away with it.

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Summation - Mr. Moskowitz

1 We know rules mean nothing to him. We know he's told you've  
2 got to tell the truth in your proffers, and he lies. We know  
3 he's told you can't violate any laws again, and what does he  
4 do? Not only does he lie under oath, but even stupid things,  
5 he possessed a contraband cell phone in prison and then kind of  
6 quibbled with me as, well, I'm not sure if possessing it is a  
7 crime. I know smuggling it is a crime, but possessing it, I'm  
8 not sure. Really? Really, does that make any sense? He gets  
9 away with things. The government lets him get away with  
10 things. So where is the incentive? Where's the hammer? The  
11 agreement, the cooperation agreement reads as if there is a  
12 real hammer over Leonel's head. You lie. We're going to rip  
13 up this agreement. You're going to go to jail for the rest of  
14 your life. Reality tells us that's not the way this deal  
15 works, not the way it works for Leonel Rivera.

16 Ladies and gentlemen, I'm going to move on from Leonel  
17 Rivera, but I want to suggest to you that, based on everything  
18 I've said to you so far, there is nothing that he says or said  
19 that you should believe beyond a reasonable doubt. He is  
20 undoubtedly the worst person any of you have ever seen. It's  
21 appalling, disgraceful, that our government made a deal with  
22 him. They're allowed to. They're certainly allowed to. Judge  
23 is going to tell you they can make a deal with him, but really,  
24 folks, that's the kind of person our government is going to  
25 make a deal with? You can't believe him beyond a reasonable

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Summation - Mr. Moskowitz

1 doubt, and by your verdict, by finding Geovanny not guilty, you  
2 should tell the government, stop using guys like that.

3 Now let's talk a little bit about Jose Sanchez. He's  
4 the next linchpin, not quite as important, but the next  
5 linchpin in the government's case. And you remember he told  
6 you that he attended or participated in two meetings in which  
7 he claims that Mr. Fuentes paid bribes to Juan Orlando  
8 Hernandez, the president of Honduras, when he was running for  
9 president. The first one he told you he heard them talking  
10 about the president -- or Juan Orlando telling Mr. Fuentes:  
11 I'm going to protect you, and I want you to reopen, reopen,  
12 your drug lab, and I'll get the military to transport your  
13 drugs and so on. Now, at first blush that testimony -- oh, and  
14 the rest of the story is, of course, Mr. Fuentes, in gratitude,  
15 pulls out \$15,000 and hands it to the soon-to-be president, and  
16 the president says: No, I don't want -- I don't want the  
17 dollars; I want cash. So that's what Mr. Sanchez is doing  
18 there.

19 So why doesn't that sense -- why doesn't that story  
20 make any sense? First of all, according to Mr. Sanchez, both  
21 meetings take place in the months before the presidential  
22 election, and so think about it. You're running for president.  
23 You've got the ultimate goal in your sight. So what you're  
24 going to do is you're going to go meet with a purported drug  
25 trafficker, invite a third party into the meeting who's not

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Summation - Mr. Moskowitz

1 part of the deal, and then talk about your drug trafficking  
2 deal in front of that third party and risk, risk losing the  
3 golden ring. It's there. It's in his sights, and he's going  
4 to bring in a third party he doesn't know, who he can't  
5 necessarily trust, and he's going to let him know I'm going to  
6 go be in bed with a drug trafficker. Does that make any sense  
7 to you?

8 Also, remember Leonel Rivera told you -- and this is  
9 probably one of the few things he said that was true -- that  
10 bribing a president isn't cheap. He said, I have to pay  
11 \$250,000 to Juan Orlando Hernandez. I have to give half a  
12 million dollars to Mr. Sosa, Lobo Sosa. I gave half a million  
13 dollars to the prior president. The government wants you to  
14 believe -- they opened on this. Mr. Gutwillig actually said in  
15 his opening -- for \$25,000 Geovanny supposedly owned Juan  
16 Orlando Hernandez. He bribed -- \$25,000, that's what's going  
17 to get him the president of Honduras? Does that make any sense  
18 to you?

19 What else? So let's talk about the money exchange,  
20 because this was interesting. Mr. Sanchez tells you he takes  
21 the cash and he goes to the bank, and he has to fill out these  
22 anti-money laundering forms because it's more than \$2,000. So  
23 I asked him: Well, what did you put on -- how did you break it  
24 up and what did you put on the money laundering forms? So he  
25 says: Well, on some of them, I put down that the money came

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Summation - Mr. Moskowitz

1 from Mr. Fuentes, and on -- that was on one meeting. And the  
2 other one, he said on the second time he did it, I put that the  
3 money came from Juan Orlando Hernandez. You're going to  
4 launder drug money and you go to the bank and you fill out the  
5 form telling the bank and the government, who's supposedly  
6 looking at these forms: Here's the drug dealer that I got the  
7 money from. Here's the corrupt politician I got the money  
8 from. Go ahead. And by the way, most importantly, he told you  
9 nobody told him how to fill out the forms. Geovanny didn't say  
10 to him, according to Mr. Sanchez: Listen, whatever you do,  
11 don't put my name on those forms. Juan Orlando Hernandez  
12 didn't say to him: Whatever you do, don't put my name on the  
13 forms. Any lies that he told on the forms -- and he admitted  
14 to you that he lied on some of the forms -- those were his  
15 decisions. Does that story ring true to you? What  
16 self-respecting drug dealer or corrupt politician is going to  
17 have his name put on a money laundering form? Sure. The cash  
18 is mine. Don't worry about it.

19 Mr. Sanchez tells another story that doesn't make a  
20 lot of sense, the story about Mr. Barahona. So he tells you  
21 that one day he's at work, and Mr. Barahona, the head of the  
22 judiciary in Honduras, walks in and says, and I think I got  
23 this quote right: "The boss sent me to help the fellow out any  
24 way I can." That's the quote, and you can look it up in the  
25 transcript.

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Summation - Mr. Moskowitz

1           Mr. Sanchez, who had never met Mr. Barahona before,  
2           interprets in his mind, oh, what that means is Juan Orlando  
3           Hernandez sent him to clean up Geovanny Fuentes' record. No  
4           factual basis for that interpretation, but that's how he  
5           interprets it. And what's the problem with it? Well, first of  
6           all, and most importantly, there was nothing to clean up.  
7           Geovanny hadn't been arrested. There were no charges against  
8           him. There were no convictions. He didn't have a record to  
9           clean up. What's he coming to clean up?

10           Then he tells you at the end of the meeting he writes  
11           a check to Mr. Barahona as a bribe. OK. I assume none of you  
12           have done bribes before, and that's of course, but bribes are a  
13           crime. Bribes are done in secret. The last thing you want to  
14           do if you're bribing somebody is give them a check. OK. So he  
15           gives him a check from Graneros, but what does he do? He  
16           charges the check to Geovanny's loan account at Graneros so  
17           that if anybody bothered to check, what's the story with the  
18           check, if anybody thought Barahona was crooked and we need to  
19           do an investigation, it's going to come right back to Geovanny.  
20           That's the story Mr. Sanchez tells you. Does that make any  
21           sense? Have you ever heard of somebody paying a bribe by  
22           check? Doesn't make any sense.

23           Now, another fact that doesn't make any sense is about  
24           Mr. Sanchez's story is the timeline. He tells you that the two  
25           meetings take place before -- in 2013 before the election, and



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Summation - Mr. Moskowitz

1 we sparred about that. You may remember he was -- he was in  
2 the United States for October of 2013, and he was not  
3 remembering exactly when it took place, but he said there were  
4 a few months in between and they both took place before the  
5 election. So we had a little bit of going around in circles on  
6 that. But ultimately, he admits, yes, they both took place in  
7 2013 before the election.

8 So he tells you at the very first meeting he sees  
9 Geovanny talking to Juan Orlando Hernandez, and they have that  
10 drug-related conversation. He says I got scared. I'm scared  
11 that I'm going to get killed because I know too much. OK.  
12 Well, what do we know? No threats were made against him at the  
13 meeting or subsequent to the meeting. He goes to the United  
14 States in October of 2013 and comes back. So was he really  
15 scared? Did he see anything that would have made him scared?  
16 If so, go to the United States, tell them what you saw, claim  
17 asylum, bring your family. That's what he ultimately does. He  
18 doesn't do it then.

19 Now, not only that, he told you how scared he was of  
20 Juan Orlando and of the defendant, but what happens when he  
21 comes back? He has this amazing meeting where he calls the  
22 next president of Honduras a thief to his face, and then when  
23 the president laughs it off and tries to shake his hand, he  
24 refuses to shake Juan Orlando's hand. Is that a guy who's  
25 scared of the president, that they're going to kill him, or is

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Summation - Mr. Moskowitz

1 that a guy now who's looking to get asylum here and making a  
2 claim? If he was really afraid, if he was really afraid, why  
3 did he wait till 2015? Why did he wait to make an asylum  
4 application another four years after arriving in the United  
5 States with his family? He comes in June 2015. He doesn't  
6 make an asylum application until October 2019. The story  
7 doesn't make sense. It gives you reasonable doubt.

8 You know, there was another part of the stipulation we  
9 read this morning, and I'm sure you're scratching your head  
10 about that too. It was just a small piece of a statement that  
11 he made when he was interviewed by the FBI in October 2019.  
12 The stipulation is in evidence. It's Government Exhibit 1009,  
13 and what it tells you is that when Mr. Sanchez met with the  
14 government, the FBI, in October 2019 and began this process  
15 that brought him to testify here, he told the government that  
16 the raid at the drug lab took place in 2014 and that the  
17 meeting between Geovanny and the president took place three  
18 weeks later. So what does that tell you? He had no idea when  
19 these events took place. We know that the raid took place in  
20 2011. He had no idea, and he screwed up the story. He messed  
21 it up. Somehow he managed to correct the story by the time he  
22 got here. That should give you reasonable doubt.

23 And by the way, what should also give you reasonable  
24 doubt is the fact that he denied messing up the story. I asked  
25 him on cross-examination: When you met with the government,

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Summation - Mr. Moskowitz

1 did you tell them that the raid took place in 2014?

2 No.

3 Did you tell them that the meeting with the president  
4 and Geovanny took place three weeks after the raid?

5 No.

6 And why is the three-week period important? Because,  
7 according to Sanchez, Geovanny wasn't around for two months.  
8 How could the meeting have taken place three weeks after the  
9 raid? The initial story he told the FBI didn't make sense, so  
10 he changed it.

11 Now, the biggest flaw in Mr. Sanchez's testimony, and  
12 this is huge, is the lack of corroboration. Now, this is not  
13 the same as Leonel. Remember what Sanchez tells you? One day  
14 he gets the code to the video system at Graneros from Jorge  
15 Jarufe, and he decides he's going to go into the video system  
16 and he's going to look for meetings between Geovanny and Juan  
17 Orlando Hernandez or meetings with Juan Orlando Hernandez where  
18 he said bad things. And he tells you he finds two meetings.  
19 The first one was a meeting between Juan Orlando Hernandez and  
20 some other politicians from Tegucigalpa, and Juan Orlando  
21 Hernandez allegedly says -- or brags about how they're  
22 stealing -- he's stealing from the government health care  
23 system, and he's better at it than former president Callejas.

24 So he finds that meeting and he downloads it, and he  
25 makes two copies of the meeting on flash drives. Second

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Summation - Mr. Moskowitz

1 meeting is the -- he says he finds the second meeting between  
2 Geovanny and Juan Orlando Hernandez when Geovanny supposedly  
3 hands Juan Orlando Hernandez \$10,000 and tells him: This is  
4 for your campaign. And, again, according to Mr. Sanchez, he  
5 makes two copies of that meeting on flash drives. Mr. Sanchez  
6 tells you, with respect to the first meeting, the health care  
7 fraud or stealing meeting, he gave one copy to a prosecutor who  
8 subsequently is murdered by gang members, and the second copy  
9 he gives to his friend Cristian Ayala.

10 Well, what does that tell you? He kept a copy of  
11 each. He kept a copy of each meeting. I don't know, folks.  
12 Did you see the meeting on your screen? If he kept a copy of  
13 the meeting, where was it? How come the government didn't  
14 provide you with those videos? Either Sanchez didn't do it, he  
15 never made the video, or it's being withheld, but whatever it  
16 is, you haven't seen it. That might have corroborated  
17 Sanchez's testimony, but you didn't see it. The failure to  
18 show you those videos should give you more than ample  
19 reasonable doubt to doubt the claims that Sanchez made and to  
20 reject his entire testimony. If the videos existed, there was  
21 no rational reason they weren't produced to you.

22 I'm going to talk for a minute about the government's  
23 expert Mr. Euraque, and his testimony should also give you some  
24 reasonable doubt. He told you Honduras is a very violent  
25 country. Many people carry guns for protection. People who

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Summation - Mr. Moskowitz

1 can afford it have bodyguards. And those two facts, the  
2 violence and the gun culture and the bodyguards -- three facts,  
3 certainly help explain some of what you've heard about Geovanny  
4 and some of what you've seen. Not surprising that a  
5 businessman in Honduras, a guy with a \$5 million contract for  
6 biomass is going to carry a gun or two. You know he has  
7 licenses for it. You've seen the licenses. He has licenses  
8 for automatic weapons. No surprise that he's going to have  
9 bodyguards. That -- the government's own expert helps explain  
10 some of that.

11 But what's most important about the professor's  
12 testimony is what he told you about Juan Orlando Hernandez.  
13 The government's whole theory is that Mr. Fuentes paid off Juan  
14 Orlando Hernandez, who's a corrupt politician, but the  
15 statistics, the objective facts, don't support the government's  
16 theory. Professor Euraque told you Juan Orlando Hernandez was  
17 one of the leaders of the legislation -- or one of the guys who  
18 helped pass legislation that got the extradition law changed so  
19 that drug traffickers could be extradited to the United States.  
20 Professor Euraque also told you that in the period of time  
21 since Juan Orlando Hernandez became president in 2013 till  
22 today, drug trafficking through Honduras has gone down over  
23 80 percent. That's a hell of a corrupt drug trafficking  
24 president.

25 Where are the facts? The government's own expert told

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Summation - Mr. Moskowitz

1 you that Juan Orlando Hernandez started an anti-corruption  
2 campaign, created a new police unit to fight corruption and  
3 drug trafficking, and has cut drug trafficking through Honduras  
4 by over 80 percent. That alone cuts the legs off of the  
5 government's theory with respect to Geovanny and the president.

6 Now, you know, before I got up to speak, before, I  
7 said to Mr. Schulman, there was something missing from the  
8 government's summation, and I realized it just before I got up.  
9 Mr. Medina, Jorge Medina, you did not hear a word from  
10 Mr. Lockard about his testimony. Now, I can understand that,  
11 because it's hard to understand why they called him in the  
12 first place, but putting that all aside, the most important  
13 part of Mr. Medina's testimony was his claim that Fuad Jarufe  
14 made an offer through him to Javier Rivera that in exchange for  
15 \$5 million I will protect you from extradition. I've got  
16 connections with the president. I can do that. And Mr. Medina  
17 told you from the stand that it was Mr. Fuentes who called him  
18 and said: Listen, Fuad Jarufe wants to talk you. And he did  
19 that twice. Now, Mr. Medina admitted that if the meetings took  
20 place, that Mr. Fuentes wasn't there and didn't know what was  
21 being said in the meetings because he was not there, but he  
22 claimed that it was Mr. Fuentes who told him to make the calls.

23 Problem with that is Javier Rivera's calls from the  
24 MCC were taped. And what we learned from Mr. Medina on the  
25 stand, reluctantly, was that in January of this year, before he

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Summation - Mr. Moskowitz

1 had agreed to come to the United States -- and by the way, we  
2 learned that it was Javier Rivera that put him in touch with  
3 the DEA so that he could come here -- but before that, he had a  
4 three-way call from -- with Mr. Javier Rivera from prison. And  
5 what happened on that three-way call? Well, Mr. Medina told  
6 you that Javier Rivera had asked him to write up a summary of  
7 what happened between him and Fuad Jarufe and that offer  
8 about -- you know, how that offer came about, and Mr. Medina  
9 said I wrote it up and I sent it to Javier Rivera. And what  
10 happens on the phone call? On the phone call, according to  
11 Mr. Medina, he candidly admits, Javier Rivera says to him: No,  
12 you got to put Geovanny in the story, add to the story that it  
13 was Geovanny who told you to call Fuad Jarufe. Well, now you  
14 know. Now you know why the government decided his testimony  
15 wasn't worth talking about in their summation.

16 Now, the government in its -- in its summation and  
17 throughout the trial has made a big deal about Geovanny's  
18 police contacts. Now, first of all, I think you all know that  
19 being friendly with police officers, people in the military,  
20 even politicians, may be bad, may be a bad idea, may show bad  
21 taste to some people, but it's certainly not a crime. In fact,  
22 one might argue that having police officers and military people  
23 as your friends tells a little bit about your character.  
24 You're hanging out with law enforcement. For some people  
25 that's a good thing. (Continued on next page)

L3JKRAM4

Mr. Moskowitz - Summation

1 MR. MOSKOWITZ: (Continuing) It's not -- you would  
2 think, you would think, that a drug dealer, the last place he  
3 wants to be is hanging out with law enforcement, but, according  
4 to Mr. Fuentes' contacts, he certainly had a lot of friends, or  
5 at least a lot of people that he knew, that were in law  
6 enforcement.

7 So, second, keep in mind that with the exception of  
8 the couple of chats with Commissioner Martinez and a couple of  
9 chats with Comanche, all of the names that the government  
10 flashed up that were in Mr. Fuentes' contacts on his phone --  
11 there were no calls, there were no texts, there were no chats.  
12 So, maybe he ran into them once or twice, maybe they were  
13 willing to give him his phone number, he's a successful  
14 businessman, you know, but the bottom line is, there's no proof  
15 of any corrupt dealings with all of those cops and politicians.  
16 You don't see any phone calls to Juan Orlando, you don't see  
17 any phone calls -- he doesn't even have Tony Hernandez's phone  
18 number, despite the fact that Sanchez said the president was  
19 going to give it to him. All of the people that they try to  
20 connect to him, there are no calls, there are no chats, there  
21 are no texts. Really, he managed to keep it off the radar, for  
22 all those years?

23 Now, the chats that the government showed you between  
24 Mr. Fuentes and Comanche, they made a big deal about it, but  
25 what is it really? It's two friends talking about current



L3JKRAM4

Mr. Moskowitz - Summation

1 events and speculating, oh, this drug dealer got killed, got to  
2 be either somebody inside or the competition, or, you know,  
3 things are really getting bad. That's the way friends talk to  
4 each other. Imagine -- look, there are plenty of people among  
5 us who take an interest in the Mafia or read, you know, stories  
6 of gang-related violence, and if you're talking to your friend  
7 about it, you may say, boy, those gangs are really at each  
8 other, or I wonder what that guy did to deserve getting  
9 whacked. That's the tenor of those conversations. There's  
10 nothing criminal about it.

11 And then the government wants to make a big deal about  
12 Mr. Fuentes' emails to his law enforcement friends or to his  
13 military friends asking for help on his trial. I want you to  
14 think about that for a minute. You're in jail in the United  
15 States, you're accused of committing terrible crimes, murders  
16 and drug-dealing in your home country, and there's no evidence,  
17 no police reports, no forensics, nothing, that supports the  
18 charges against you; all you've got is Leonel Rivera's  
19 testimony. You're getting ready for trial, you don't know the  
20 system, what are you going to do? You've got friends in law  
21 enforcement back home. What are you going to do? You're going  
22 to call them and say, listen, can you help me? I'm desperate  
23 here, I don't know what's going on, can you get me the records  
24 about that murder? Maybe there's something in there that we  
25 can use to show that I didn't do it. That's all that is. It's

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Mr. Moskowitz - Summation

1 a guy from a foreign country reaching out for his friends back  
2 home for help with his trial. You would expect that that's  
3 what a person interested in defending himself would do, and  
4 that's what he did. Nothing more, nothing less.

5 Let's talk a little bit about the guns. I shouldn't  
6 say the guns, I should say the pictures of the guns. Well,  
7 obviously, you all know that having pictures of guns is not  
8 illegal. In fact, in Honduras, having guns, if they're  
9 licensed, is not illegal. In many parts of our country -- you  
10 know, we live in New York, we have a different mindset about  
11 guns -- many of us do anyway -- but in many parts of our country,  
12 the gun culture is normal. You can buy as many guns as you  
13 want, you can own assault rifles, and that's normal, and people  
14 are proud of it. Some people have pictures of their dogs, some  
15 people have pictures of their guns. But we don't even know  
16 that the pictures that were on Mr. Fuentes' phones were of guns  
17 that he owned, of guns that he was looking to buy, of guns that  
18 he liked that he might have wanted to buy, of guns that he  
19 bought for the guards that were protecting him or the guards  
20 that were protecting his businesses. We don't know anything  
21 about the pictures other than they were on his phone. What  
22 does that tell you? Nothing. Pictures of guns on the phone?  
23 Nothing.

24 Even less of a nothing are the pictures taken from his  
25 son's phone and from his son's Instagram account. I don't know

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Mr. Moskowitz - Summation

1 how many of you have children, but I venture to guess for those  
2 of you who have children, none of you would want to be held  
3 responsible for what might be found on your kids' phone or what  
4 they might post on social media. Really, you're going to find  
5 that somehow pictures of guns on Geo's phone, his son's phone,  
6 prove that somehow he's a drug dealer? And let's put to rest  
7 this nonsense about the pictures with the sapo and the frog.  
8 Let's assume for a moment, give him the benefit of the doubt,  
9 that sapo meant snitch, okay? Let's assume that that's true in  
10 the context. You have a father who's sitting in prison accused  
11 of crimes that the son thinks he didn't commit. Wouldn't you  
12 expect the son to be angry? Wouldn't you expect that maybe if  
13 he's not so mature, he'd lash out on social media? But one  
14 thing we know - we know the threats weren't serious, and even  
15 the government didn't think they were serious. How do we know  
16 that? Because when I asked Agent Fairbanks, well, you saw  
17 these pictures, right? And pictures of guns, and sapo, and  
18 snitch beware, and whatever, did you go speak to Geo, did you  
19 do any investigation to see whether those threats were real?  
20 No. If the threats were real, if it wasn't just some stupid  
21 kid blowing off steam on social media, you know Agent Fairbanks  
22 or somebody on his team would have been down there speaking to  
23 him and maybe even arresting him if they thought it was  
24 serious.

25 We're almost done. One last thing:

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Mr. Moskowitz - Summation

1           Geovanny spoke to Agent Gonzalez when he got arrested.  
2           He waived his rights, didn't ask for an attorney, answered  
3           Agent Gonzalez's questions. Now, you would expect, if he was a  
4           drug dealer, and he had something to hide, he would say Metro?  
5           I don't know any Metro. The Riveras? I don't know him.  
6           Vaquero? I don't know him. But that's not what he does. He's  
7           asked a question, he tells them, this is the guy I know, this  
8           is the guy I don't know, this is how I know him.

9           And look at the video. Compare Geovanny's demeanor in  
10          what had to be an incredibly stressful and anxious time,  
11          compare his demeanor, his straightforwardness, his candor with  
12          what you saw on the witness stand from the government's mass  
13          murderer. Compare those two, and ask yourself: Which one of  
14          them told the truth?

15          By the way, of course, you only saw excerpts, so what  
16          does it tell you?

17          Okay. Ladies and gentlemen, thank you for your  
18          patience. Thank you for your attention. In my remarks, I've  
19          tried to cover the most important evidence in the case and show  
20          you why there is ample reasonable doubt that requires that you  
21          find Geovanny not guilty. When I sit down, as the Judge told  
22          you, I will undoubtedly -- well, he didn't tell you this, I'm  
23          telling you -- when I sit down, I am going to -- I guarantee  
24          you, I'm going to say, oh, God, I forgot something. That's the  
25          way life is. But this is my last chance to talk to you, so I'm

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1 going to ask you to keep an open mind. When you go into the  
2 jury room -- you know, the government gets a rebuttal  
3 summation, and they get the last word, and that's appropriate  
4 because, as the Judge said, they have the burden of proof.  
5 When you go into the jury room, I'm going to ask you if there  
6 are questions that Mr. Gutwillig raises that I didn't address  
7 or didn't answer, try to think about how maybe there is another  
8 answer and see whether that answer or the question he asks  
9 makes any sense or whether there's a logical explanation for  
10 it. Most importantly, when you enter into the jury room to  
11 begin your deliberations, remember that even as you go into the  
12 jury room, the presumption of innocence still cloaks Geovanny,  
13 it still protects him, and the burden of proof remains with the  
14 government beyond a reasonable doubt. They haven't satisfied  
15 that burden. And when you go back into the jury room, think  
16 about the points I made, and I'm sure, I'm confident, Geovanny  
17 is confident, he's put his life in your hands, he is confident  
18 you will find the government has failed to prove him guilty  
19 beyond a reasonable doubt, and you will return the only verdict  
20 supported by the evidence, and that is not guilty.

21 Thank you.

22 THE COURT: Thank you, Mr. Moskowitz.

23 Ladies and gentlemen, please stand up and stretch.

24 Let me tell you what I propose, and you will let me know if  
25 this sounds reasonable. I propose that we hear the rebuttal

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Mr. Gutwillig - Rebuttal

1 summation of the government, which will not exceed 30 minutes,  
2 then we take our lunch break. We'll take a full 45 minutes,  
3 all right, and then you'll come back, and then you'll hear my  
4 instructions on the law.

5 Does that sound sensible? Or does anybody want to  
6 break now and have the government rebuttal after lunch?

7 All right, let's do it now. Thank you.

8 Mr. Gutwillig, whenever you're ready, and after we're  
9 finished cleaning up. I think we're done with the cleaning, so  
10 whenever you're ready.

11 MR. GUTWILLIG: Ladies and gentlemen, the defense just  
12 told you about the defendant's nightmare, when he got arrested,  
13 but that is not what the evidence at this case has shown. What  
14 the evidence in this case has shown is the nightmare that the  
15 defendant created, the nightmare he created for Americans by  
16 pumping cocaine into this country, the nightmare he created in  
17 his country with the violence and the corruption that went with  
18 it. Let me be very clear - this is not a close case. Not at  
19 all.

20 We are almost done. This is officially the beginning  
21 of the end. I'm going to speak for a little while, Judge  
22 Castel will instruct you on the law, and then you'll be able to  
23 begin your deliberations. And as Judge Castel has said, the  
24 government has the burden of proving these charges beyond a  
25 reasonable doubt. We should. That's something that we

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Mr. Gutwillig - Rebuttal

1 embrace, we welcome it, and that burden never changes, but if  
2 the defense does make arguments, like they just did, you should  
3 scrutinize them carefully, just the way that we've asked you to  
4 scrutinize the evidence that we put on at trial. So let's talk  
5 about some of those arguments.

6 Defense counsel said a lot of things over the past  
7 hour or so. I'm not going to address each and every one. I'm  
8 not going to talk about how guns are like dogs. Did you see a  
9 lot of pictures of dogs on the defendant's cell phone? These  
10 arguments are just distractions. And it's understandable.  
11 It's understandable that defense counsel would do that because  
12 they are confronted with a mountain of evidence. Let's talk  
13 about it.

14 You saw and heard all that evidence. You saw the  
15 pictures, you saw the machine guns, the semiautomatic pistols,  
16 the weapons that the defendant used to transport massive  
17 amounts of cocaine, the cash. Where do you think that came  
18 from?

19 And remember what the defendant wrote about deleting  
20 wiretaps? You saw the numbers of corrupt cops, law  
21 enforcement, crooked politicians, and the location data  
22 searching Casa Presidencial to see his drug-trafficking  
23 partner, the president.

24 You heard from José Sanchez, the accountant. You  
25 probably noticed how his testimony was tucked into the end of

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Mr. Gutwillig - Rebuttal

1 defense counsel's summation. You saw the fear that he had when  
2 he testified, and there was a good reason why - because he came  
3 in here, and he took the stand, and he made allegations against  
4 the president of his country. No small wonder he was scared.  
5 He watched the president and the defendant join forces to flood  
6 this country with cocaine. And the defendant didn't just team  
7 up with the president; there was a lot of talk about no drugs.  
8 The defendant teamed up with the president's brother, Tony  
9 Hernandez. You saw a kilogram of cocaine with his initials on  
10 it. That's pretty clear. That's who the president directed  
11 the defendant to work for.

12 And you heard from Leonel Rivera. We'll get to  
13 defense counsel's arguments, but remember this: I told you  
14 straightaway that he had done bad things, it was not him. What  
15 I told you was that he would give you an inside look, and he  
16 did. How does he know all those things? Because the defendant  
17 was his partner. That's how he knows those things. That is  
18 why he's a witness.

19 And you read the defendant's prison emails, emails  
20 where he admits to knowing information about one of his murder  
21 victims that only he could. And when you focus on these  
22 things, when you focus on the evidence, on the facts, when you  
23 consider this evidence without distraction, there can be no  
24 reasonable doubt, none, that the defendant is guilty as  
25 charged. The evidence is consistent, it's corroborated, and it



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Mr. Gutwillig - Rebuttal

1 is overwhelming.

2 Defense counsel told you that the only evidence in  
3 this case is witnesses - Leonel Rivera - and that is dead  
4 wrong. Here is all the other evidence you have: You have the  
5 defendant's phones. I've already talked about the guns. You  
6 saw scores and scores of pictures. Did you see a license for  
7 every one? Not just guns, machine guns, customizable weapons,  
8 extended magazines to fire more bullets faster, a laundry list  
9 of police, military, and politicians on his phone, probably  
10 just friends he was calling to catch up with.

11 You heard Mr. Lockard talk about Comanche and  
12 Commissioner Martinez. Defense counsel said, well, why weren't  
13 there more chats? Because Commissioner Martinez told the  
14 defendant how to delete -- avoid wiretaps. And the chats that  
15 you did see? Some of them were talking about the Valles,  
16 powerful drug traffickers that the defendant claimed not to  
17 know in his postarrest. Arnupo's son got nailed. Think he  
18 knew what that meant? It seemed pretty clear, didn't it?

19 And also in that phone contact information, cell  
20 phone, Juan Orlando Hernandez. He didn't just call him up, he  
21 searched for directions to Casa Presidencial on two important  
22 days in the prosecution of the president's brother. You  
23 watched some of the defendant's postarrest interview. He  
24 admitted to knowing a Who's Who of drug traffickers in  
25 Honduras - Metro, the Cachiros, Pluto, Vaquero. You should

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Mr. Gutwillig - Rebuttal

1 look at the videos. You should watch them. The defendants  
2 explained it all away. They knew each other, Choloma is a  
3 small town. Yeah, one of about 200,000 people, one of the  
4 biggest cities in Honduras.

5 You read the defendant's emails. You read him ask his  
6 son to get help from Chinchilla, the Attorney General of  
7 Honduras, where he sent details about a murder he participated  
8 in, the half-buried mechanic from Choloma, and to get  
9 information about the Cerro Negro thing. You've heard evidence  
10 about that. He had the audacity to send these emails from  
11 prison.

12 And you've also seen his son's iCloud and social  
13 media - more of the same, guns. And this isn't just blowing  
14 off steam on social media. Some of the guns looked pretty  
15 similar to the guns you saw in the defendant's phone. And hola  
16 sapo, hi snitch? On a table full of guns? If you want to help  
17 someone who's being prosecuted, call a lawyer. This was the  
18 same tactic that the defendant used - intimidation and kill.

19 You also saw chats from the son's account talking  
20 about how we could possibly know about the defendant's green  
21 rifle. That's been connected throughout this entire case -  
22 José Sanchez, Jorge Medina - as Mr. Lockard told you in his  
23 summation.

24 Defense counsel told you this case was just about  
25 witnesses, and that is wrong. They also talked about all the

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Mr. Gutwillig - Rebuttal

1 investigative steps that we could have, should have, would have  
2 taken. They focus on all the evidence you don't have,  
3 supposedly, despite the mountain of evidence that you do have.  
4 They talked about not having drugs, not having cash, not having  
5 recordings. That's just another distraction. You want to know  
6 why there aren't drugs on the table? Because the defendant got  
7 tipped off before law enforcement raided his lab. No recorded  
8 conversations? Already talked about the chat where he was told  
9 how to delete them. No police reports? You heard about what  
10 happened to the officer who participated in that raid. The  
11 defendant kidnapped him, tortured him, killed him. No police  
12 reports.

13 No calls from Leonel Rivera? Metro was his point of  
14 contact. Metro was the defendant's partner; Metro was Leonel  
15 Rivera's cousin. That makes sense. And why are there no video  
16 recordings from Leonel Rivera to the defendant? Well, it turns  
17 out by the time he started doing that, they had tried to kill  
18 each other and had a bit of a falling-out. It would have been  
19 strange if you had seen those recordings.

20 It's not surprising you don't have those things.  
21 Through the defendant's corruption and violence, he made sure  
22 you did not. The defendant also raised all sorts of arguments  
23 about how the government didn't march down to Honduras and get  
24 all the evidence. We didn't because we couldn't. You heard  
25 law enforcement tell you, you heard law enforcement witnesses

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Mr. Gutwillig - Rebuttal

1 tell you that the Drug Enforcement Administration can't, on its  
2 own, go collect documents or evidence in Honduras. They have  
3 to rely on the Honduran Government, the same government headed  
4 by Juan Orlando Hernandez, one of the defendant's  
5 coconspirators. It should be pretty clear by now why the DEA  
6 thought that might be a dead end. Don't be distracted by these  
7 arguments. These are just a sideshow. And as I expect Judge  
8 Castel will instruct you, the government doesn't have to prove  
9 its case by any particular way. Just think about all the ways  
10 that the government has.

11 Let's talk about Leonel Rivera. The defense argued  
12 that Leonel Rivera is telling you lies so that he can get a  
13 better sentence. I will start again with the same fundamental  
14 point - Leonel Rivera has done terrible things. We are not  
15 asking you to like him; we're asking you to scrutinize his  
16 testimony and use your common sense.

17 You heard about negotiations with the government, when  
18 those happened, 20 tons and more. Those are distractions.  
19 Leonel Rivera didn't pull any punches about himself when he was  
20 up there. He admitted to 78 murders. He told you about them.  
21 He talked about bribing presidents. And on the stand, in front  
22 of the judge who will sentence him, he talked about trying to  
23 kill the defendant. This is all a distraction.

24 But put that aside for a second. Don't worry about  
25 his incentives for a moment. Think about how his testimony is

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Mr. Gutwillig - Rebuttal

1 corroborated by the other evidence in this case. His story  
2 matches up with José Sanchez's. Leonel Rivera told you that  
3 the defendant's cocaine lab at Cerro Negro was raided and that  
4 the defendant murdered one of the law enforcement officers  
5 responsible. José Sanchez told you about that raid, too. He  
6 told you about it from the other end when he saw the defendant  
7 bribe a judge to make sure that he wouldn't be prosecuted.

8 José Sanchez told you he never met Leonel Rivera. You  
9 saw them both. You think a hardened drug trafficker is hanging  
10 out with an accountant? You think they just got together and  
11 made up some story together to nail the defendant? That is  
12 ridiculous.

13 Leonel Rivera is also corroborated by the defendant's  
14 own statements in his postarrest interview. We don't need to  
15 run over the listing all over again, but here are the basics:

16 The defendant told you, just like Leonel Rivera did,  
17 that he was introduced to the Cachiros by Metro, their cousin,  
18 at a nightclub, and he told you about all the drug dealers he  
19 knew. Leonel Rivera told you about those people, also, the  
20 coconspirators, joint offenders. They were the defendant's  
21 business partners and rivals.

22 He also told you about the boat mechanic who was  
23 murdered, and I want you to remember this: Leonel Rivera  
24 didn't decide on his own to walk up there and take the stand.  
25 He is a witness in this case because the defendant chose him.

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Mr. Gutwillig - Rebuttal

1 He is a witness in this case because the defendant wanted to  
2 work with him, wanted to be like him. Why does Leonel Rivera  
3 remember all the small details about the guns and the drugs?  
4 Because they were partners. You remember the people you work  
5 with. That's just common sense. And did Leonel Rivera seem  
6 like the type of person to forget where he put 500 kilograms of  
7 cocaine?

8 The defendant wants you to believe that Leonel Rivera  
9 is a liar, but he wants you to believe that selectively. He  
10 wants you to believe it when he's talking about the defendant;  
11 he doesn't want you to believe it when he's talking about  
12 himself.

13 Leonel Rivera is not a Boy Scout - we wish he were -  
14 but the reason that he knows all this is because he was a  
15 violent drug trafficker like the defendant, and they worked  
16 together. So now think again about his incentives. He faces  
17 30 years plus life in prison if he lies. When he came here  
18 first, it was a ten-year mandatory minimum. He has bought  
19 himself quite a bit of time. But think about what he looked  
20 like up there, think about the other corroboration, think about  
21 whether it's believable. Don't believe him because he's a good  
22 person, believe him because he's a selfish person, and it isn't  
23 in his interest to lie -- to tell the truth in this case -  
24 because if he lies, he faces a certainty of life in prison.

25 The defense spent a lot of time on notes. Let's talk

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Mr. Gutwillig - Rebuttal

1 about Leonel Rivera's first.

2 Take a closer look at those notes. Those notes talk  
3 about Metro being the defendant's partner, just like you heard  
4 in the case. Just like you heard in the testimony, it's  
5 consistent with Leonel Rivera's testimony at trial. You don't  
6 have to decide who killed Pluto to find the defendant guilty at  
7 this trial.

8 And look at what else the notes say. In 2015, Leonel  
9 Rivera identified the defendant as a drug trafficker. That is  
10 what this trial is about. What these notes show is that the  
11 defendant -- is that Leonel Rivera was telling the truth about  
12 what the defendant did. The defense just wants you to pick and  
13 choose from what he said when it's convenient.

14 Let's talk about José Sanchez. What we're talking  
15 about here is a date discrepancy. That's it. I expect that  
16 Judge Castel will instruct you that dates can be approximate,  
17 but what are we actually talking about in those notes? José  
18 Sanchez watching the defendant bribe the president. And he was  
19 the president of congress before he was the president of the  
20 country. So, the statement in these notes, that one of the  
21 defendant's meetings with the president was sometime or  
22 another, could have referred to either position. It's just  
23 noise.

24 You heard José Sanchez talk about those meetings. You  
25 saw him, you heard him talk about how the defendant called the

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Mr. Gutwillig - Rebuttal

1 president Juancho, and you have the corroboration to back it  
2 up. You have the kilo with the president's brother's initials  
3 on it, and you have the evidence on the defendant's cell phone  
4 getting directions to Casa Presidencial.

5 Let's talk about José Sanchez now. Defense counsel  
6 tried to downplay his testimony. He couldn't have been scared,  
7 he called the president a thief. If he had really been that  
8 scared, he would have stayed in the United States and claimed  
9 asylum. This man came into court, came into federal court here  
10 in the United States, he got on that stand, and he told you  
11 that he saw a narco-trafficker conspire with the president of  
12 his country. Think about the gravity of that. Mr. Sanchez  
13 fled his country because of what he saw, because of the crimes  
14 that he saw the defendant commit with people, judge, president,  
15 at the highest levels of the Honduran Government. He is an  
16 example of a person whose life was completely rocked by what  
17 the defendant did. He had to flee his country where he lived  
18 his entire life because he knew too much, because he had seen  
19 the defendant and the president talk about flooding the United  
20 States with cocaine. That meeting was burned into his memory.  
21 You saw him up there. He remembered every last bit of it. He  
22 remembered that he sat on a blue couch, and he remembers all of  
23 it because that meeting changed his life. He told you that he  
24 wouldn't have traded his life in Honduras for anything.  
25 Unfortunately, he didn't have a choice.



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Mr. Gutwillig - Rebuttal

1           One thing on withholding the video: Don't you think  
2           that if we had it, it would have been the first thing on the  
3           screen? The accusation that it's being withheld is absurd.

4           The defense also made a lot of noise about José  
5           Sanchez's money laundering. Yeah, he said, he knew it was a  
6           crime, he did it. And why was it a crime? Because he was  
7           laundering drug money. What was he laundering? He was  
8           laundering the defendant's drug money. You think he did that  
9           all by himself? You think he just decided to go to the bank  
10          and drop off stacks of cash? No. He was an accountant, he was  
11          an employee, he was scared, and he was dealing with high levels  
12          of political power and high levels of violence.

13          So, when you think about José Sanchez's testimony, and  
14          you think about what he looked like up there, think about what  
15          he did – you are right that he was scared. He had every reason  
16          to be. But he still did it.

17          Defense counsel also suggested that at those meetings,  
18          \$25,000 couldn't possibly be enough to bribe the president.  
19          Remember, the president got something much more valuable than  
20          the money. José Sanchez told you that the president got the  
21          defendant's cocaine lab to work for him, the defendant's  
22          cocaine factory. The president got access to it. It was so  
23          close to the most important port in Honduras, Puerto Cortes.  
24          You heard Mr. Lockard describe how the value of cocaine  
25          increases as it makes its way to the United States. Just think

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1 about the value of that pipeline.

2 Also, these just happened to be the only two meetings  
3 that José Sanchez saw, it doesn't mean there weren't others.  
4 And, in fact, the defendant told Leonel Rivera at the MCC, in  
5 2020, that he had recently bribed Juan Orlando Hernandez twice.  
6 Take a look at the Waze data to figure out when.

7 Ladies and gentlemen, very soon this case will be in  
8 your hands. I'd like to leave you with one final thought.  
9 It's the same request I made a couple of weeks ago. Use your  
10 common sense. You have the evidence, you'll have the law, you  
11 saw the witnesses, you'll make your determination. I know you  
12 will. And use your common sense. And when you do, you'll find  
13 that this is not a complicated case, and it's not a close one.  
14 The evidence at trial has shown that the defendant is exactly  
15 who we said he was – he is a violent drug trafficker, who  
16 distributed massive amounts of cocaine, through corruption and  
17 murder. It's a horrific story, and it is a simple one. Hold  
18 him responsible for what he did. Find the defendant guilty.

19 THE COURT: Thank you, Mr. Gutwillig.

20 Ladies and gentlemen, you may retire for lunch. You  
21 may not discuss the case among yourselves or with anyone. You  
22 have to keep an open mind because you haven't heard my final  
23 instructions on the law. But have a very pleasant lunch.  
24 We'll pick up in about 45 minutes. Thank you very much.

25 Everyone else, remain in the courtroom until the

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jurors clear the elevator lobby.

(Jury not present)

THE COURT: Thank you very much. See you after lunch.

Please be back in 45 minutes or less.

(Continued on the next page)

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Charge

1 AFTERNOON SESSION

2 2:10 p.m.

3 (In open court; jury not present)

4 THE COURT: Please be seated. Bring our jury in.

5 (Jury present)

6 THE COURT: A change of view. Ladies and gentlemen,  
7 it might be self-evident, but the reason I'm seated here is I  
8 can deliver my instructions safely without the face mask. Hope  
9 you enjoyed your lunch.

10 Members of the jury, you have now heard all the  
11 evidence in the case as well as the final arguments of counsel.  
12 We've reached the point where you are about to undertake your  
13 final function as jurors. You've paid careful attention to the  
14 evidence, and I'm confident that you will act together with  
15 fairness and impartiality to reach a just verdict in this case.

16 It has been my duty to preside over the trial and to  
17 decide what testimony and evidence was relevant under the law  
18 for you to consider. My duty at this point is to instruct you  
19 as to the law. It is your duty to accept these instructions of  
20 law and to apply them to the facts as you determine them.

21 If any attorney has stated a principle of law  
22 different from any that I state to you in my instructions, it  
23 is my instructions you must follow. You must not substitute  
24 your own idea of what the law is or ought to be.

25 You are not to infer from any of my questions or

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1 rulings or anything else that I've said or done during the  
2 trial that I have any view as to the credibility of the  
3 witnesses or how you should decide the case.

4 I will give you the typed text of these instructions  
5 for your use in the jury room. It is possible that there might  
6 be a slight variation between the words I have spoken and the  
7 typed text that I will give you. The words I have spoken  
8 control over the typed text.

9 As members of the jury, you are the sole and exclusive  
10 judges of the fact. You pass on the evidence. You determine  
11 the credibility of the witnesses. You resolve such disputes as  
12 there may be in the testimony. You draw whatever reasonable  
13 inferences you decide to draw from the facts as you have  
14 determined them. You decide the weight of the evidence.

15 You have taken an oath as jurors. It is your sworn  
16 duty to determine the facts and to follow the law as I give it.

17 It is the duty of the attorneys to object when the  
18 other side offers testimony or other evidence that the attorney  
19 believes is not properly admissible. Therefore, you should  
20 draw no inference from the fact that an attorney objected to  
21 any evidence. Nor should you draw any inference from the fact  
22 that I sustained or overruled an objection.

23 Your verdict must be based solely upon the evidence  
24 developed at trial or the lack of evidence. The parties in  
25 this case are entitled to a trial free from prejudice about a

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1 party's race, religion, national origin, sex, or age. Our  
2 judicial system cannot work unless you reach your verdict  
3 through a fair and impartial consideration of the evidence.

4 Similarly, under your oath as jurors, you're not to be  
5 swayed by sympathy. Once you let fear, prejudice, bias, or  
6 sympathy interfere with your thinking, there is a risk that you  
7 will not arrive at a just and true verdict. Your verdict must  
8 be based exclusively upon the evidence or the lack of evidence  
9 in the case.

10 The fact that the prosecution is brought in the name  
11 of the United States of America entitles the government to no  
12 greater and no lesser consideration than accorded to any other  
13 party to a litigation. All parties, whether the government or  
14 an individual, stand as equals under the law.

15 The defendant in this case, Geovanny Fuentes Ramirez,  
16 has entered a plea of not guilty to the indictment. As I told  
17 you before, the law presumes the defendant to be innocent of  
18 all charges against him. The defendant is to be presumed by  
19 you to be innocent throughout your deliberations until such  
20 time, if ever, that you as a jury are satisfied that the  
21 government has proven the defendant's guilt beyond a reasonable  
22 doubt.

23 The presumption of innocence alone is sufficient to  
24 require an acquittal of a defendant unless and until, after  
25 careful and impartial consideration of all the evidence, you as

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1 jurors are convinced unanimously of the defendant's guilt  
2 beyond a reasonable doubt.

3 The question naturally comes up, what is a reasonable  
4 doubt? The words almost define themselves. It's a doubt  
5 founded in reason and arising out of the evidence, or the lack  
6 of evidence. It is a doubt that a reasonable person has after  
7 carefully weighing all the evidence. Proof beyond a reasonable  
8 doubt must therefore be proof of such a convincing nature that  
9 a reasonable person would not hesitate to rely and act upon it  
10 in the most important of his or her own affairs. Proof beyond  
11 a reasonable doubt is not proof beyond all possible doubt.

12 Reasonable doubt is a doubt that appeals to your  
13 reason, your judgment, your experience, your common sense. It  
14 is not a caprice, whim, or speculation. It is not an excuse to  
15 avoid the performance of an unpleasant duty. It is not  
16 sympathy for a defendant.

17 The government must prove each and every element of  
18 the crimes charged beyond a reasonable doubt. This burden  
19 never shifts to the defendant. The law never imposes upon a  
20 defendant in a criminal case the burden of calling any  
21 witnesses or producing any evidence. The fact that one party  
22 called more witnesses and introduced more evidence does not  
23 mean that you should find in favor of that party. It is the  
24 quality of the evidence that matters.

25 If, after a fair, impartial, and careful consideration

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1 of all the evidence, you can honestly say that you are not  
2 satisfied of the guilt of a defendant -- that is, if you have a  
3 doubt that would cause you as a prudent person to hesitate  
4 before acting in matters of importance to yourself -- then you  
5 have a reasonable doubt. In that circumstance, it is your duty  
6 to return a not guilty verdict for the defendant.

7 On the other hand, if, after a fair, impartial, and  
8 careful consideration of all the evidence, you can honestly say  
9 that you are satisfied of the guilt of a defendant and that you  
10 do not have a doubt that would prevent you from acting in  
11 important matters in the personal affairs of your life, then  
12 you have no reasonable doubt. Under that circumstance, you  
13 should return a guilty verdict for the defendant.

14 The evidence in this case is the sworn testimony of  
15 the witnesses, the exhibits received into evidence, and the  
16 stipulations made by the parties.

17 By contrast, the questions of a lawyer are not  
18 evidence. It is the witness' answers that are evidence, not  
19 the questions.

20 Testimony that has been stricken or excluded by me is  
21 not evidence and may not be considered in rendering your  
22 verdict. If I have instructed you that evidence is received  
23 for only a limited purpose, then it may be considered only for  
24 that limited purpose.

25 Arguments by lawyers are not evidence because the



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1 lawyers are not witnesses. What the lawyers have said to you  
2 in their openings and in their closings is intended to help you  
3 understand the evidence. If, however, your recollection of the  
4 facts differs from the lawyers' statements, it's your  
5 recollection that controls.

6 To constitute evidence, exhibits must first be  
7 admitted or received in evidence. Exhibits marked for  
8 identification but not admitted are not evidence, nor are  
9 materials brought forth to refresh a witness' recollection.

10 It is for you alone to decide the weight, if any, to  
11 be given to the testimony you have heard and the exhibits you  
12 have seen.

13 Generally, there are two types of evidence that you  
14 may consider in reaching your verdict.

15 One type is direct evidence. Direct evidence is when  
16 a witness testifies about something he or she knows by virtue  
17 of his or her own senses -- something he or she has seen, felt,  
18 touched, or heard. Circumstantial evidence is evidence from  
19 which you may infer the existence of certain facts. Let me  
20 give you an example to help you understand what is meant by  
21 circumstantial evidence.

22 Well, it's a little bit peculiar to give this example  
23 because it's pretty close to what we have here. So I want you  
24 to imagine this courtroom with the draperies drawn. Well, lo  
25 and behold, you're in a courtroom with the draperies drawn. So

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1 you really can't see out. You don't know what the weather is  
2 outside, all right? Now I want you to imagine that the doors  
3 of the courtroom open and a person walks in with a raincoat and  
4 brushing off perhaps droplets on their shoulder. And the next  
5 person comes in with an umbrella, and they're shaking the  
6 umbrella. Well, from these combination of facts, it would  
7 be -- remember, you can't look out the window -- but from these  
8 combination of facts, it would be reasonable for you to infer  
9 that it had been raining.

10 That's all there is to circumstantial evidence. You  
11 draw an inference from one fact or combination of facts to  
12 another. All right. And it's based on reason and experience  
13 and common sense.

14 Circumstantial evidence is of no less value than  
15 direct evidence. The law makes no distinction between direct  
16 evidence and circumstantial evidence. It simply requires that  
17 your verdict must be based on all the evidence.

18 You have had the opportunity to observe all the  
19 witnesses. It is now your job to decide how believable each  
20 witness was in his or her testimony. You are the sole judges  
21 of the credibility of each witness and of the importance of his  
22 or her testimony.

23 You should carefully scrutinize all of the testimony  
24 of each witness, the circumstances under which each witness  
25 testified, the impression the witness made when testifying, and

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1 any other matter in evidence that may help you decide the truth  
2 and the importance of each witness' testimony.

3 In other words, in assessing credibility, you may size  
4 up a witness in light of his or her demeanor, the explanations  
5 given, and all the other evidence in the case. In making your  
6 credibility determinations, use your common sense, your good  
7 judgment, and your everyday experiences in life.

8 If you believe that a witness knowingly testified  
9 falsely concerning any important matter, whether at trial or in  
10 a prior proceeding, you may distrust a witness' testimony  
11 concerning other matters. You may reject all of the testimony  
12 or you may accept such parts of the testimony that you believe  
13 are true and give it such weight as you think it deserves.

14 The testimony of a witness may be discredited by  
15 showing that the witness testified falsely concerning a matter  
16 or by evidence that at some point, some other time, the witness  
17 said or did something or failed to say or do something which is  
18 inconsistent with the testimony the witness gave at this trial.

19 Evidence of a prior inconsistent statement may not be  
20 considered by you as affirmative evidence of the fact asserted  
21 in the statement or the defendant's guilt. Evidence of the  
22 prior inconsistent statement was placed before you for the more  
23 limited purpose of helping you decide whether to believe the  
24 trial testimony of the witness who contradicted himself. If  
25 you find that the witness made an earlier statement that

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1 conflicts with his or her testimony, you may consider that fact  
2 in deciding how much of his or her testimony, if any, to  
3 believe. If you believe that a witness has been discredited in  
4 this matter, it is exclusively your right to give the testimony  
5 of that witness whatever weight you think it deserves.

6 In making this determination, you may consider whether  
7 the witness purposely made a false statement or whether it was  
8 an innocent mistake, whether the inconsistency concerns an  
9 important fact or whether it had to do with a small detail,  
10 whether the witness had an explanation for the inconsistency,  
11 and whether that explanation appealed to your common sense.

12 In deciding whether to believe a witness, you may take  
13 account of any evidence of hostility or affection that the  
14 witness may have towards the defendant or the government. You  
15 may consider any evidence that a witness may benefit in some  
16 way from the outcome of the case, and any loyalty, incentive,  
17 or motive that might cause the witness to shade the truth. You  
18 should carefully scrutinize all of the testimony of each  
19 witness, the circumstances under which each witness testified,  
20 and any other matter in evidence that may help you decide the  
21 truth and importance of each witness' testimony.

22 In deciding whether a witness was -- whether or not a  
23 witness was truthful, you may ask yourself: How did the  
24 witness appear? Was the witness candid, frank, and forthright  
25 or did the witness seem evasive or suspect in some way? How

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1 did the witness testify on direct compared with how the witness  
2 testified on cross-examination? Was the witness consistent or  
3 contradictory? Did the witness appear to know what he or she  
4 was talking about? Did the witness have the opportunity to  
5 observe the facts he or she testified about?

6 It is your duty to consider whether the witness has  
7 permitted any bias or interest to color his or her testimony.  
8 In short, if you find that a witness is biased, you should view  
9 his or her testimony with caution, weigh it with care, and  
10 subject it to close and searching scrutiny.

11 It is for you to decide from your observations  
12 applying your common sense and experience and all other  
13 considerations mentioned whether the possible interest of any  
14 witness has intentionally or otherwise colored or distorted his  
15 or her testimony. You are not required to disbelieve an  
16 interested witness. You may accept as much of his testimony as  
17 you deem reliable and reject as much as you deem unworthy of  
18 acceptance.

19 You have heard testimony of law enforcement officers.  
20 The fact that a witness may be employed by a federal, state, or  
21 local government as a law enforcement officer does not mean  
22 that his or her testimony is deserving of more or less  
23 consideration or greater or lesser weight than that of an  
24 ordinary witness. It is fair for you to consider whether the  
25 testimony of a law enforcement witness has been colored by a

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1 personal or professional bias or interest in the outcome of the  
2 case. It is your decision, after reviewing all the evidence,  
3 whether to accept the testimony of the law enforcement witness  
4 and to give that testimony whatever weight, if any, you find it  
5 deserves.

6 You have heard evidence of certain statements  
7 allegedly made by the defendant to the DEA. Ultimately, you  
8 are to give the statements such weight, if any, as you feel  
9 they deserve in light of all the circumstances.

10 Among the exhibits in evidence some documents are  
11 redacted. You saw some on the screen. There are blacked out  
12 portions. "Redacted" means that part of the document was  
13 covered. You're to concern yourself only with the part of the  
14 item that has been admitted into evidence. You should not  
15 consider any possible reason why the other part of the document  
16 has been covered.

17 One or more witnesses in this trial testified using  
18 the Spanish language. That testimony was translated for you by  
19 a court-certified interpreter. Even if you speak Spanish, you  
20 are obligated under the law to accept as binding the  
21 translation of witness testimony provided to you by the  
22 court-certified interpreter.

23 Stipulations. In this case you heard evidence in the  
24 form of a stipulation of testimony. A stipulation of testimony  
25 is an agreement between the parties that, if a witness is

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1 called, the person would give certain testimony. You must  
2 accept as true the fact that the witness would have given that  
3 testimony. However, it is for you to determine the effect to  
4 be given that testimony.

5 In this case you've heard evidence in the form of a  
6 stipulation of fact. A stipulation of fact is an agreement  
7 between the parties that a certain fact is true. You must  
8 regard such agreed upon-fact as true. The weight or importance  
9 of the fact is a matter for you, the jury, to decide.

10 You have heard testimony from a witness who testified  
11 that he was involved in certain crimes and is cooperating with  
12 the government in the hope of receiving a lower sentence. The  
13 law allows the use of such testimony. The testimony of a  
14 cooperating witness may alone be enough to establish the  
15 elements of a crime if the jury believes that the testimony  
16 establishes the elements beyond a reasonable doubt.

17 A cooperator's testimony should be scrutinized with  
18 greater care than the testimony of an ordinary witness and  
19 viewed with particular caution when you decide how much of that  
20 testimony to believe. It does not follow, however, that simply  
21 because a person has admitted to participating in one or more  
22 crimes that he is incapable of giving truthful testimony.

23 The fact that a witness is cooperating with the  
24 government may be considered by you as bearing upon his  
25 credibility. You may consider whether a cooperating witness,

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1 like any other witness called in this case, has an interest in  
2 the outcome of the case or is biased in favor or against the  
3 defendant or the government, and if so, whether it has affected  
4 his testimony.

5 It is no concern of yours why the government made an  
6 agreement with a particular witness. Your sole concern is  
7 whether a witness has given truthful testimony.

8 In evaluating the testimony of a cooperating witness,  
9 you should ask yourself whether the witness would benefit more  
10 by lying or by telling the truth. Was his testimony made up in  
11 any way because he believed or hoped that he would somehow  
12 receive favorable treatment by testifying falsely? Or did he  
13 believe that his interest would be best served by testifying  
14 truthfully? If you believe that the witness was motivated by  
15 hopes of personal gain, was the motivation one that would cause  
16 him to lie, or was it one that would cause him to tell the  
17 truth? Did this motivation color his testimony?

18 Like the testimony of any other witness, cooperating  
19 witness testimony should be given the weight that it deserves  
20 in light of the facts and circumstances before you, taking into  
21 account the witness' demeanor, candor, the strength and  
22 accuracy of witness recollection, his background, and the  
23 extent to which his testimony is or is not corroborated by  
24 other evidence in the case.

25 If you find that the testimony was false, you should



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1 reject it. However, if, after a cautious and careful  
2 examination of a cooperating witness' testimony and assessment  
3 of his credibility, you are satisfied that the witness told the  
4 truth, you should accept it as credible and act upon it  
5 accordingly. Even if you find that a witness testified falsely  
6 in one part, you still may accept his testimony in other parts,  
7 or you may disregard all of it. This is a determination  
8 entirely for you, the jury.

9           You have heard testimony from government witnesses who  
10 have -- or a government witness who has entered a guilty plea  
11 to charges arising out of the same or similar facts. You are  
12 instructed that you are to draw no conclusions or inference of  
13 any kind about the guilt of the defendant from the fact that a  
14 prosecution witness pleaded guilty to similar charges. The  
15 decision of that witness to plead guilty was a personal  
16 decision that he made about his guilt. It may not be used in  
17 any way as evidence against or unfavorable to the defendant on  
18 trial here.

19           You have heard testimony about evidence seized in  
20 connection with certain searches conducted by law enforcement  
21 officers or otherwise obtained by law enforcement. Evidence  
22 obtained from these searches was properly admitted in this case  
23 and may be properly considered by you. Such searches were  
24 appropriate law enforcement actions.

25           Whether you approve or disapprove of how this evidence

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1 was obtained should not enter into your deliberation because I  
2 now instruct you that the government's use of this evidence is  
3 entirely lawful. You must, therefore, regardless of your  
4 personal opinions, give this evidence full consideration, along  
5 with all the other evidence in the case in determining whether  
6 the government has proved the defendant's guilt beyond a  
7 reasonable doubt.

8 Video and audio recordings of various foreign-language  
9 conversations have been admitted into evidence and transcripts  
10 of English-language translations of those foreign-language  
11 recordings have been admitted into evidence. I instruct you  
12 that it is the English translation of the conversation  
13 reflected on those transcripts that is evidence. The parties  
14 have stipulated that the English translation of the  
15 conversations are accurate and admissible as evidence. As a  
16 result, you should not substitute your own understanding of any  
17 foreign language for that of any translation that was admitted  
18 into evidence. You must accept the translations without regard  
19 to your own understanding of those foreign languages.

20 Whether you approve or disapprove of the recordings  
21 may not enter into your deliberations. I instruct you that the  
22 recordings were made in a lawful manner, that no one's rights  
23 were violated, that the government's use of this evidence is  
24 lawful, and that it was properly admitted into evidence. Of  
25 course, it is up to you to decide what weight, if any, to give

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1 to this evidence.

2           There is no legal requirement that law enforcement  
3 agents investigate crimes in a particular way or that the  
4 government prove its case through any particular means. While  
5 you are to carefully consider the law enforcement evidence  
6 introduced by the government, you are not to speculate as to  
7 why they used the techniques they did or why they did not use  
8 other techniques. The government is not on trial. Law  
9 enforcement techniques are not your concern.

10           Your concern is to determine whether, on the evidence  
11 or lack of evidence, the defendant's guilt has been proven  
12 beyond a reasonable doubt.

13           You have heard evidence of other acts allegedly  
14 committed by defendant and/or his alleged coconspirators that  
15 do not form the basis for any charge against the defendant.

16           The evidence was received for a limited purpose, and  
17 if believed, you may consider it only for that limited purpose.  
18 You are not to consider the evidence for any other purpose.  
19 You may not use this evidence to conclude that because the  
20 defendant or his alleged coconspirators committed the other  
21 acts, then the defendant must also have committed the acts  
22 charged in the indictment. You are not permitted to make such  
23 inferences.

24           Let me remind you that the defendants are not on trial  
25 for committing acts not alleged in the indictment.

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1 Accordingly, you may not consider evidence of prior acts as a  
2 substitute for proof that the defendants a criminal personality  
3 or bad character. The evidence of other prior acts was  
4 admitted for a much more limited purpose, and you may consider  
5 it only for that limited purpose.

6 You have heard evidence during the trial that  
7 witnesses have discussed the facts of the case and their  
8 testimony with the lawyers before the witness appeared in  
9 court.

10 You may consider that fact when you're evaluating a  
11 witness' credibility. There is nothing either unusual or  
12 improper about a witness meeting with lawyers before testifying  
13 so that the witness can be aware of the subjects he or she will  
14 be questioned about, focus on those subjects, and have the  
15 opportunity to review relevant exhibits before being questioned  
16 about them. Such consultation helps conserve your time and the  
17 Court's time. In fact, it would be unusual for a lawyer to  
18 call a witness without such consultation.

19 You have heard testimony from what we call expert  
20 witnesses. An expert is a witness who by education or  
21 experience has acquired learning or experience in a specialized  
22 area of knowledge. Such witnesses are permitted to give their  
23 opinions as to relevant matters in which they profess to be an  
24 expert and give their reasons for their opinions. Expert  
25 testimony is presented to you on the theory that someone who is

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1 experienced in a specialized field can assist you in  
2 understanding the evidence or in reaching an independent  
3 decision on the facts.

4 Your role in judging credibility applies to experts as  
5 well as to other witnesses. You should consider the expert  
6 opinions which were received in evidence in this case and give  
7 them as much or as little weight as you think they deserve. If  
8 you should decide that the opinion of an expert was not based  
9 on sufficient education or experience or on sufficient data, or  
10 if you should conclude that the trustworthiness or credibility  
11 of an expert is questionable for any reason, or if the opinion  
12 of the expert was outweighed, in your judgment, by other  
13 evidence in the case, then you might disregard the opinion of  
14 the expert entirely or in part.

15 On the other hand, if you find that the expert opinion  
16 was based on sufficient data, education, and experience, and  
17 the other evidence does not give you reason to doubt the  
18 expert's conclusions, you would be justified in placing  
19 reliance on his testimony.

20 The government has presented some exhibits in the form  
21 of what I call demonstrative exhibits or summary exhibits.  
22 These charts and summaries were admitted in place of the  
23 underlying documents in some instances, or they may have been  
24 to illustrate what's in the documents that have been received  
25 into evidence. If it is a demonstrative, then it's only as

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1 good as the underlying evidence. There were no summaries  
2 admitted in lieu of the underlying documents, so you don't need  
3 to consider that. So the only demonstratives you saw  
4 illustrated other evidence that came into the case, and I'm  
5 thinking there was a chart there with some pictures of  
6 individuals and then some other information on there. That  
7 other information came into evidence through other means. So  
8 the demonstrative is only as good as the underlying evidence.

9 Some of the people who may have been involved in the  
10 events leading to this trial are not on trial. There's no  
11 requirement that all members of a conspiracy be prosecuted or  
12 that all members be tried together in the same proceeding.

13 You may not draw any inference, favorable or  
14 unfavorable, from the fact that any person in addition to the  
15 defendant is not on trial here. You also may not speculate as  
16 to the reason why other persons are not on trial. Those  
17 matters are wholly outside your concern and have no bearing on  
18 your function as jurors.

19 There are people whose names you heard during the  
20 course of trial but who did not appear to testify. I instruct  
21 you that each party had an equal opportunity or lack of  
22 opportunity to call any of these witnesses. Therefore, you  
23 should draw no inference or reach no conclusion as to what they  
24 would have testified to had they been called. Their absence  
25 should not affect your judgment in any way.

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1           You should remember my instruction, however, that the  
2 law does not impose on the defendant in a criminal case the  
3 burden or duty of calling any witnesses or producing any  
4 evidence.

5           Under the Constitution a defendant has no obligation  
6 to testify or to present any evidence because it is the  
7 government's burden to prove the defendant guilty beyond a  
8 reasonable doubt. That burden remains with the government  
9 throughout the entire trial and never shifts to a defendant. A  
10 defendant is never required to prove that he is innocent.  
11 Therefore, you must not attach any significance to the fact  
12 that the defendant did not testify. No adverse inference  
13 against the defendant may be drawn by you because he did not  
14 take the witness stand, and you may not consider it against the  
15 defendant in any way in your deliberations in the jury room.

16           I instruct you that anything you may have seen or  
17 heard about this case outside the courtroom is not evidence and  
18 must be disregarded. Indeed, as I've instructed you throughout  
19 this case, you may not read, view, or listen to any media or  
20 press report or Internet or social media posting about this  
21 case or about the people or issues referred to during this  
22 trial. Your verdict must be based solely on the evidence or  
23 lack of evidence that came out in the courtroom and the Court's  
24 instructions on the law.

25           In your deliberations and in reaching your verdict,

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1 you must consider each count separately and determine whether  
2 the government has carried its burden of proof with respect to  
3 the charge. I will provide you with a verdict form, and you  
4 will need to report the results of your deliberations on each  
5 count on the verdict form.

6 The indictment contains three counts. Each count  
7 constitutes a separate offense or crime. You must consider  
8 each count of the indictment separately, and you must return a  
9 separate unanimous verdict as to each count. There is no  
10 significance to the order of the numbered counts or the  
11 specific number of counts charged.

12 You may only find the defendant guilty of a particular  
13 count if the government has proven each element of the offense  
14 charged with respect to the count beyond a reasonable doubt.  
15 Your verdict as to one count should not control your decision  
16 as to any other count.

17 Ladies and gentlemen, let's stand up and stretch.

18 Let me turn to the substantive law.

19 The defendant, Geovanny Fuentes Ramirez, has formally  
20 been charged in what is called an indictment. An indictment is  
21 simply an accusation. It's no more than the means by which a  
22 criminal case is started. It is not evidence. It is not proof  
23 of a defendant's guilt. It creates no presumption, and it  
24 permits no inference that a defendant is guilty. You are to  
25 give no weight to the fact that an indictment has been returned



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1 against the defendant.

2 Before you begin your deliberations, you will be  
3 provided with a copy of the indictment. I will first summarize  
4 the offenses charged and then explain in detail the elements of  
5 the charged offenses.

6 Count One charges the defendant with conspiring to  
7 violate the narcotics laws of the United States by entering  
8 into an agreement to engage in one or more of the following  
9 types of conduct: importing cocaine into the United States;  
10 manufacturing or distributing cocaine, knowing or intending  
11 that it would be imported into the United States; and  
12 possessing cocaine with intent to distribute, or manufacturing  
13 or distributing cocaine, on board an aircraft registered in the  
14 United States. That's what Count One charges.

15 Count Two charges the defendant with using or carrying  
16 machine guns or destructive devices, or aiding and abetting the  
17 use or carrying of machines guns or destructive devices, during  
18 and in relation to the crime charged in Count One.

19 Count Three charges the defendant with conspiring to  
20 use and carry machine guns or destructive devices in connection  
21 with, and to possess machine guns or destructive devices in  
22 furtherance of, the crime charged in Count One.

23 That's a summary of the three charges. Mr. Fuentes  
24 Ramirez has entered a plea of not guilty and is presumed  
25 innocent of all charges. You must consider each charge

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1 separately and determine whether the government has carried its  
2 burden of proof with respect to that charge. In order to  
3 convict the defendant of a charge, it's necessary for you to  
4 find the government has proven each and every element of the  
5 specific charge by proof beyond a reasonable doubt.

6 So let me turn now to Count One. To sustain its  
7 burden of proof with respect to the charge of conspiracy  
8 contained in Count One, the government must prove beyond a  
9 reasonable doubt the following two elements:

10 That the conspiracy charged in Count One existed. In  
11 other words, that from at least in or about 2009 up to and  
12 including 2020, there was an agreement or understanding between  
13 two or more persons to engage in one or more of the following  
14 types of conduct: (1) import a controlled substance into the  
15 U.S., (2) manufacture and distribute a controlled substance  
16 knowing or intending that the controlled substance would be  
17 imported into the U.S., or (3) possess a controlled substance  
18 with intent to distribute and manufacture a controlled  
19 substance on board an aircraft registered in the United States.

20 And then the second element is that the defendant  
21 knowingly and intentionally associated himself with and joined  
22 in the conspiracy.

23 So what is a conspiracy? A conspiracy is an agreement  
24 or understanding between two or more persons to accomplish by  
25 joint action a criminal or unlawful purpose.

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Charge

1           The essence of conspiracy is an unlawful agreement to  
2           violate the law. The success or failure of a conspiracy is not  
3           material to the question of guilt or lack of guilt, for a  
4           conspiracy is a crime entirely separate and distinct from the  
5           substantive crime that may be the goal of the conspiracy. The  
6           crime of conspiracy is complete once the defendant enters into  
7           the unlawful agreement.

8           To establish the existence of a conspiracy, the  
9           government is not required to show that two or more persons sat  
10          around a table and entered into a solemn pact, orally or in  
11          writing, stating that they have formed a conspiracy to violate  
12          the law and setting forth details of the plans and the means by  
13          which the unlawful object is to be carried out or the part to  
14          be played by each conspirator. Indeed, it would be  
15          extraordinary if there were such a formal document or specific  
16          agreement. The adage "actions speak louder than words" is  
17          applicable here.

18          When people undertake to enter a criminal conspiracy,  
19          much is left to an unexpressed understanding. Conspirators do  
20          not usually reduce their agreements to writing, nor do they  
21          publicly broadcast their plans. Express language or specific  
22          words are not required to indicate assent or attachment to a  
23          conspiracy. From its nature, a conspiracy is almost invariably  
24          characterized by secrecy, which makes detection difficult.

25          You need only find that the defendant entered into the

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1 unlawful agreement alleged in the indictment with one or more  
2 persons in order to find that a conspiracy existed.

3 If, upon consideration of the evidence, direct and  
4 circumstantial, you find beyond a reasonable doubt that two or  
5 more persons had a meeting of the minds -- that is, they agreed  
6 to work together in furtherance of the unlawful scheme -- then  
7 the proof of the existence of the conspiracy is established.

8 In order for the government to prove a conspiracy, it  
9 must prove that the conspiracy existed between at least two  
10 individuals who are not acting at the direction of the  
11 government at the time of the conspiracy. In this case, one of  
12 the government witnesses, Leonel Devis Rivera Maradiaga, was  
13 acting at the direction of the government beginning in  
14 November 2013. As a result, Rivera Maradiaga may not be  
15 considered by you in determining whether the government has  
16 proved beyond a reasonable doubt that an agreement or  
17 understanding was reached between two or more individuals to  
18 accomplish the object of the conspiracy from the time Rivera  
19 Maradiaga began acting at the direction of the government in  
20 November 2013.

21 However, Rivera Maradiaga may be considered by you in  
22 determining whether such an agreement existed before he started  
23 acting at the direction of the government. In other words, the  
24 relevant question is whether the government has proven beyond a  
25 reasonable doubt that the criminal agreement charged in Count

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1 One was reached between the defendant or other individuals who  
2 are not working at the direction of the government at the time.

3 The object of a conspiracy is the illegal goal that  
4 the coconspirators agree or hope to achieve.

5 As I mentioned previously, there are three objects,  
6 and they are, again, importation of a controlled substance from  
7 a place outside the U.S. into the U.S., manufacture or  
8 distribution of a controlled substance with knowledge or intent  
9 that some of the controlled substance would be unlawfully  
10 imported into the U.S., or the possession of a controlled  
11 substance with intent to distribute or the manufacturing or  
12 distribution of a controlled substance on board an aircraft  
13 registered in the U.S.

14 The government does not have to prove all three  
15 objects charged. Rather, proof beyond a reasonable doubt of an  
16 agreement to accomplish any one of the three objects of the  
17 alleged conspiracy is sufficient. You must be unanimous as to  
18 which object you find the defendant guilty of. That is, you  
19 must all be in agreement with respect to at least one of the  
20 alleged objects of the conspiracy charged in Count One.

21 With respect to the second object -- the distribution  
22 or manufacture of a controlled substance with intent or  
23 knowledge that some of the controlled substance would be  
24 imported into the U.S. -- it is not necessary for the  
25 government to prove that the conspiracy had as its object both

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1 the distribution and the manufacture of a controlled substance.  
2 It is sufficient if you find that the conspiracy was aimed at  
3 either the manufacture or the distribution of a controlled  
4 substance with the intent or knowledge that some of it would  
5 later be imported into the U.S. Here, too, you must be  
6 unanimous as to which of these objectives -- manufacture or  
7 distribution or both -- the conspiracy had.

8 With respect to the third object -- the manufacturer  
9 or distribution or the possession with intent to distribute a  
10 controlled substance on board an aircraft registered in the  
11 U.S. -- it is not necessary for the government to prove that  
12 the conspiracy had as its object the manufacture and  
13 distribution of a controlled substance, as well as the  
14 possession of a controlled substance with intent to distribute.  
15 It is sufficient if you find that the conspiracy was aimed at  
16 any one of those objectives on board an aircraft registered in  
17 the United States. Here, too, you must be unanimous as to  
18 which of these objectives -- manufacture or distribution or  
19 possession with intent to distribute or all three -- the  
20 conspiracy had.

21 I instruct you that cocaine is a controlled substance,  
22 but the purity of the narcotics involved is not an element of  
23 the crime charged, so you need not be concerned with that. I  
24 also instruct you that the defendant need not know the exact  
25 nature of the drug. Also, in considering whether a conspiracy

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1     existed, you need not consider whether the government has  
2     proved that a particular quantity of a controlled substance was  
3     involved in the charged conspiracy.

4             Now let me define the terms "import," "distribute,"  
5     "manufacture," "possession with intent to distribute," and  
6     "onboard an aircraft registered in the U.S.," as they're used  
7     in the objects of Count One.

8             The term "import" has its common, everyday meaning,  
9     namely, to bring or introduce something into an area of the  
10    United States. To import a substance means to bring or  
11    transport a substance into the U.S. from someplace outside the  
12    U.S.

13            It is not necessary for you to find that the defendant  
14    or any coconspirator actually carried, or agreed to actually  
15    carry, a controlled substance into the U.S. Nor must you  
16    conclude that others in the conspiracy ultimately succeeded in  
17    actually bringing the controlled substance into the U.S.

18            "Distribute," it means the actual, constructive, or  
19    attempted transfer of a controlled substance. To distribute  
20    simply means to deliver, to possess -- I'm sorry, to deliver,  
21    to pass on, to hand over something to another person or to  
22    cause it to be delivered, passed on, or handed over to another.  
23    Distribution does not require a sale, but it includes sales.

24            "Manufacture" means to produce, prepare, or process,  
25    in this context, a controlled substance, or to engage or

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1 participate in a process that results in the production of the  
2 controlled substance.

3 Again, with respect to Count One, since defendant is  
4 charged with conspiring to manufacture or distribute a  
5 controlled substance, it's not necessary that you find that the  
6 defendant actually manufactured or distributed a controlled  
7 substance. Nor must you conclude that others in the conspiracy  
8 actually manufactured or distributed anything. You need only  
9 find that the defendant and others knowingly agreed to  
10 manufacture or distribute a controlled substance.

11 Possession with intent to distribute. The word  
12 "distribution" means the process of actual, constructive, or  
13 attempted transfer of a controlled substance, including a sale.  
14 Distribution does not require a sale, but includes sales.

15 The legal concept of possession may differ from the  
16 everyday usage of the term. Actual possession is what most of  
17 us think of as possession, that is, having physical, custody or  
18 control of an object, as I possess this bottle of water.  
19 However, a person need not have actual physical possession,  
20 that is, physical custody of an object, in order to be in legal  
21 possession of it. If a person has the ability to exercise  
22 substantial control over an object, even if he or she does not  
23 have the object in his physical custody, and that person has  
24 the intent to exercise control, then the person is in  
25 possession of that object. This is called "constructive



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1 possession."

2 Control over an object may be demonstrated by the  
3 existence of a working relationship between one person having  
4 the power or ability to control the item and another person who  
5 has actual physical custody. The person having control  
6 "possesses" the narcotics because he or she has an effective  
7 working relationship with the person who has actual physical  
8 custody of the narcotics and because he or she can direct the  
9 movement or transfer or disposition of the narcotics. In  
10 addition, an individual may have possession of an item that is  
11 not found on his person because that individual has a  
12 relationship to the location where the item is maintained. In  
13 this matter, for example, a businessperson may possess things  
14 that are scattered through a number of stores or offices or  
15 installations around the country.

16 More than one person can have control over the same  
17 narcotics. The law recognizes that possession may be sole or  
18 joint. If one person has an actual or constructive possession  
19 of a thing, possession is sole. If more than one person has  
20 possession of it, as I've defined possession for you, then  
21 possession is joint. That is what is meant by "possession."

22 Finally, possession and ownership are not the same. A  
23 person can possess an object and not be the owner.

24 Let me give you an example. As I told you, if I hold  
25 this bottle up, I possess it. All right. Another example,

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1 let's say that I brought some candy in and left it on Flo's  
2 desk. Flo knows that she can't eat all of the candy and that  
3 she better leave some for me. I do not physically possess the  
4 candy. It's on Flo's desk, but I do have control over it. Flo  
5 also has control over it. I can be said to possess the candy  
6 jointly with Flo.

7 One more example. Say my grandmother left me some  
8 jewelry, maybe someone's watch when she died, and it is now  
9 sitting in a safe deposit box at the bank. My siblings and I  
10 know that we are the only people who can get into that box. Do  
11 we have possession of the jewelry? Absolutely, we have  
12 possession of it, even though it's in a safe deposit box inside  
13 a bank and not in our hands, not even in our homes.

14 If you find that a person knowingly possessed a  
15 controlled substance, then you must decide whether the person  
16 intended to distribute it. Possession with intent to  
17 distribute simply means the possession of a controlled  
18 substance with the intention or purpose to distribute. As I  
19 explained, to distribute means simply to transfer to another.

20 Often it is possible to determine whether someone had  
21 an intent to distribute from the quantity of the drugs that  
22 were possessed, although the possession of a large quantity of  
23 narcotics does not necessarily mean that an individual intended  
24 to distribute them. On the other hand, an individual may have  
25 intended to distribute a controlled substance even if he did

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1 not possess a large quantity of it.

2 The government need prove only one object of the  
3 conspiracy. The government need not prove all three. You must  
4 be unanimous, however, as to which act, if any, was proven  
5 beyond a reasonable doubt to have been the object of the  
6 conspiracy.

7 I also instruct you that the defendant need not know  
8 that the narcotics would be or were possessed on board an  
9 aircraft that was registered in the United States. If the  
10 government proves that an aircraft used or intended to be used  
11 in the conspiracy was registered in the United States, that is  
12 enough.

13 Ladies and gentlemen, please stand up and stretch.

14 If you conclude that the government has proven beyond  
15 a reasonable doubt the existence of the conspiracy charged in  
16 Count One, then you must next determine whether the defendant  
17 participated in the conspiracy with knowledge of its unlawful  
18 purpose, and in furtherance of its unlawful objective or  
19 objectives.

20 The government must prove beyond a reasonable doubt  
21 that the defendant knowingly and intentionally entered into the  
22 conspiracy charged in Count One with a criminal intent, that  
23 is, with a purpose to violate the law, and that the defendant  
24 agreed to take part in the conspiracy to promote and cooperate  
25 in its unlawful objective or objectives.

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1           An act is done knowingly and intentionally if it is  
2 done deliberately and purposely. That is, a defendant's acts  
3 must have been the product of the defendant's conscious  
4 objective rather than the product of a mistake or accident,  
5 mere negligence, or some other innocent reason. The fact that  
6 the acts of a defendant, without knowledge, merely happen to  
7 further the purpose or objectives of the conspiracy does not  
8 make the defendant a member.

9           Now, science has not yet devised a manner of looking  
10 into a person's mind and knowing what that person is thinking.  
11 I think I said that to you when we were doing jury selection.  
12 However, you do have before you evidence of certain acts,  
13 conduct, and conversations. The government contends that these  
14 acts, conduct, and conversations show, beyond a reasonable  
15 doubt, the defendant's knowledge of the unlawful purpose of the  
16 conspiracy. By pleading not guilty, the defendant denies he  
17 committed the charged offense. It is for you to determine  
18 whether the government has proven, beyond a reasonable doubt,  
19 the defendant's knowledge and intent.

20           It is not necessary for the defendant to have been the  
21 owner of or responsible for the controlled substance that was  
22 intended to cross the United States border. Other individuals  
23 or organizations may be the owners of or responsible for the  
24 narcotics intended to cross the border, but the defendant may  
25 nevertheless be guilty of conspiring to distribute or

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1 manufacture the narcotics with knowledge or intent that they be  
2 imported if the government proves the elements of Count One as  
3 I am explaining them.

4 It is not necessary for the government to show that  
5 the defendant was fully aware of every detail of that  
6 conspiracy or that defendant knew every other member of that  
7 conspiracy. A defendant may know only one other member of that  
8 conspiracy and still be a coconspirator. It is not necessary  
9 for a defendant to receive any monetary benefit from his  
10 participation in the conspiracy or to have a financial stake in  
11 its outcome. It is enough if he participated in the conspiracy  
12 intentionally and knowingly.

13 The duration and extent of a defendant's participation  
14 in the conspiracy charged in Count One has no bearing on the  
15 issue of the defendant's guilt. A defendant need not have  
16 joined the conspiracy at the outset. He may have joined it at  
17 any time in its progress, and he will still be held responsible  
18 for all that was done before he joined and all that was done  
19 during the conspiracy's existence while he was a member. Each  
20 member of a conspiracy may perform separate and distinct acts.  
21 Some conspirators play minor roles, while others play major  
22 roles. An equal role is not what the law requires. Even a  
23 single act may be sufficient to draw a defendant within the  
24 scope of the conspiracy.

25 However, a person's mere presence at the scene of a

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1 crime does not by itself make him a member of the conspiracy.  
2 Similarly, a person's mere association with a member of the  
3 conspiracy does not make that person a member of the  
4 conspiracy, even when the association is coupled with knowledge  
5 that a conspiracy exists.

6 (Continued on next page)  
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1 THE COURT: (Continuing) What is necessary is that a  
2 defendant participate in the conspiracy with knowledge of its  
3 unlawful purpose and with an intent to aid in the  
4 accomplishment of its unlawful objective or objectives.

5 A conspiracy, once formed, is presumed to continue  
6 until either its objective is accomplished or there is some  
7 affirmative act of termination by its members. So, too, once a  
8 person is found to be a member of a conspiracy, he is presumed  
9 to continue his membership in the venture until its  
10 termination, unless it is shown by some affirmative proof that  
11 he withdrew and dissociated himself from it.

12 The conspiracy charged in Count One is alleged to have  
13 existed from in or about 2009, up to and including in or about  
14 2020. It is not essential that the government prove the  
15 conspiracy alleged started and ended on any specific date. It  
16 is sufficient if you find that the conspiracy was formed and  
17 that it existed for some time around the dates that I just  
18 mentioned.

19 When people enter into a conspiracy to accomplish an  
20 unlawful end, they become agents or partners of one another in  
21 carrying out the conspiracy. Accordingly, the reasonably  
22 foreseeable acts or statements of any other member of the  
23 conspiracy, committed in furtherance of the common purpose of  
24 the conspiracy, are deemed under the law to be the acts or  
25 statements of all of the members of the conspiracy, and all of

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1 the members of the conspiracy are responsible for such acts or  
2 statements. This rule applies even though such acts or  
3 statements were not made or committed in the defendant's  
4 presence or were made or committed without his knowledge.

5 If, and only if, you find the government has proved  
6 beyond a reasonable doubt that the defendant is guilty of  
7 participating in the conspiracy charged in Count One, you must  
8 then determine the type of controlled substance involved in the  
9 conspiracy and its weight.

10 You will be provided with a verdict form that will  
11 include spaces for you to indicate your determination as to  
12 drug type and quantity.

13 The government has alleged that cocaine was the  
14 controlled substance involved in the conspiracy charged in  
15 Count One. I instruct you, as a matter of law, that cocaine is  
16 a controlled substance, as I previously defined for you. The  
17 government need not prove the purity of the cocaine; any  
18 mixture or substance containing a detectable amount of cocaine  
19 is sufficient.

20 You need not determine the precise quantity of  
21 cocaine. Instead, if you reach the question of quantity,  
22 indicate on the form whether the government has established  
23 beyond a reasonable doubt that the conspiracy involved five  
24 kilograms and more of mixtures or substances containing a  
25 detectable amount of cocaine. Your finding on quantity must be



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1 unanimous in the sense that all of you must agree that the  
2 conspiracy involved at least the quantity you indicate. Only  
3 if you all agree that the conspiracy involved five kilograms  
4 and more of cocaine should you mark that finding on the verdict  
5 form.

6 In making your determination about quantity, you  
7 should include whatever quantity of cocaine was involved in any  
8 act or acts in which the defendant personally and directly  
9 participated.

10 If you find that the defendant personally or directly  
11 participated in a jointly undertaken drug transaction, he is  
12 responsible for the full quantity of the drugs involved in that  
13 transaction. Or series of transactions, I should say.

14 In addition, in making your determination about  
15 quantity, you should also include any other quantity of cocaine  
16 involved, so long as the quantity was either known to the  
17 defendant or reasonably foreseeable to him and within the scope  
18 of the conspiracy. Reasonably foreseeable means the defendant  
19 could have reasonably anticipated the type and quantity of  
20 drugs involved in the conspiracy.

21 Count Two charges the defendant with using and  
22 carrying machine guns or destructive devices in connection  
23 with, as well as aiding and abetting the possession of machine  
24 guns or destructive devices in connection with, the  
25 drug-trafficking crime charged in Count One of the indictment.

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1           Specifically, Count Two charges that from at least in  
2 or about 2009, up to and including in or about 2020, the  
3 defendant during, and in relation to the narcotics importation  
4 conspiracy charged in Count One, knowingly used and carried  
5 firearms in furtherance of the conspiracy. Count Two also  
6 charges the defendant with aiding and abetting the use,  
7 carrying, and possession of those firearms, specifically  
8 including machine guns that were capable of automatically  
9 shooting more than one shot without manual reloading by a  
10 single function of the trigger, as well as destructive devices.

11           In order to convict the defendant on Count Two, the  
12 government must prove the following elements beyond a  
13 reasonable doubt:

14           First, that the defendant committed the  
15 drug-trafficking crime charged in Count One of the indictment.  
16 Therefore, if you conclude the defendant's guilt has been  
17 proven beyond a reasonable doubt as to Count One, then this  
18 element has been satisfied. If the government has not met its  
19 burden as to Count One, this element is not satisfied.

20           Second, the defendant knowingly used or carried a  
21 firearm during and in relation to the drug-trafficking crime in  
22 Count One, or possessed a firearm in furtherance of that  
23 drug-trafficking crime charged in Count One, or aided and  
24 abetted another in such use, carrying, or possession of a  
25 firearm.

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1 I will define certain of the terms related to the  
2 second element of Count Two.

3 In order to prove the defendant used – this is on the  
4 meaning of the word "use" – used machine guns or destructive  
5 devices, the government must prove beyond a reasonable doubt an  
6 active employment of a machine gun or destructive device by the  
7 defendant during and in relation to the commission of a  
8 drug-trafficking crime.

9 This does not mean that the defendant must actually  
10 fire or attempt to fire the machine guns or destructive  
11 devices, although that would obviously constitute use of the  
12 machine guns or destructive device. Brandishing, displaying,  
13 or even referring to the machine gun or destructive device, so  
14 that others present know that the defendant has a machine gun  
15 or destructive device available, if needed, all constitute use  
16 of a machine gun or destructive device. The mere possession of  
17 a machine gun or destructive device at or near the site of the  
18 crime without active employment, as I just described it, is  
19 not, however, sufficient to constitute use of a machine gun or  
20 destructive device.

21 In order to prove that the defendant carried a machine  
22 gun or destructive device, the government must prove beyond a  
23 reasonable doubt that the defendant had a machine gun or  
24 destructive device within his control, so that it was available  
25 in such a way, that it furthered the commission of the crime.

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1 The defendant need not have held a machine gun or destructive  
2 device physically; that is, have had actual possession of it on  
3 his person.

4 If you find the defendant had dominion and control  
5 over the place where a machine gun or destructive device was  
6 located, and had the power and intention to exercise control  
7 over that machine gun or destructive device, and that the  
8 machine gun or destructive device was immediately available to  
9 him in such a way that it furthered the commission of the  
10 drug-trafficking crime charged in Count One, you may find the  
11 government has proven that the defendant carried the machine  
12 gun or destructive device.

13 I've previously defined the word "possess," and those  
14 instructions apply here.

15 I will add, also, that possession of a machine gun or  
16 destructive device in furtherance of a drug-trafficking crime  
17 requires that the defendant possessed a machine gun or  
18 destructive device and the possession advances or moves forward  
19 the crime. The mere presence of a machine gun or destructive  
20 device is not enough. Possession in furtherance requires that  
21 the possession be incident to and an essential part of the  
22 crime. The machine gun or destructive device must have played  
23 some part in furthering the crime in order for this element to  
24 be satisfied.

25 I advise you that the fact that a defendant has a

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1 license to carry a firearm is not a defense to Count Two.

2 Now, I will now instruct you on the concept of aiding  
3 and abetting. For Count Two, the defendant may be found guilty  
4 if he aided and abetted a third party who committed the crime.  
5 Aiding and abetting liability is its own theory of criminal  
6 liability.

7 Under the relevant statute, one way the defendant may  
8 be found guilty of aiding and abetting a crime is if the  
9 defendant, while not himself committing the crime, assisted  
10 another person or persons in committing the crime.  
11 Specifically, under the federal aiding and abetting statute,  
12 whoever aids, abets, counsels, commands, induces, or procures  
13 the commission of an offense is punishable as a principal. A  
14 person who aids and abets another to commit an offense is just  
15 as guilty of that offense as if he had committed it himself.  
16 Therefore, if you find that the government has proved beyond a  
17 reasonable doubt that another person actually committed a crime  
18 with which the defendant is charged, and that the defendant  
19 aided and abetted that person in the commission of the crime,  
20 then you may find the defendant guilty of that crime.  
21 Obviously, no one can be convicted of aiding and abetting the  
22 criminal acts of another if no crime was committed by the other  
23 person. But if you do find that a crime was committed, then  
24 you must consider whether the defendant aided and abetted the  
25 commission of the crime.

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1 Under this theory, in order to aid and abet another to  
2 commit a crime, it is necessary that the defendant willfully  
3 and knowingly associated himself in some way with the crime,  
4 and that he willfully and knowingly sought by some act to help  
5 make the crime succeed. Participation in a crime is willful if  
6 action is taken voluntarily and intentionally or, in the case  
7 of a failure to act, with the specific intent to fail to do  
8 something the law requires to be done – that is, with a bad  
9 purpose either to disobey or disregard the law.

10 The mere presence of the defendant where a crime is  
11 being committed, even when coupled with knowledge by the  
12 defendant that a crime is being committed, is not sufficient to  
13 make the defendant guilty as an aider and abettor. Such a  
14 defendant would only be guilty of the offenses as an aider and  
15 abettor if, in addition to knowing of the criminal activity, he  
16 actually took some action intending to help the crime succeed.

17 In considering this theory of liability, ask  
18 yourselves these questions:

19 Did the defendant participate in the crime charged as  
20 something he wished to bring about?

21 Did he associate himself with the criminal venture  
22 knowingly and willfully?

23 Did he seek by his actions to make the criminal  
24 venture succeed?

25 If he did, then the defendant is an aider and abettor,

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1 and therefore guilty of the offense.

2 Under the statute, another way a defendant may be  
3 found guilty of aiding and abetting the criminal acts of  
4 another is if the defendant intentionally caused another person  
5 to physically commit the crime. Specifically, the statute  
6 provides that whoever willfully causes an act to be done which  
7 if directly performed by him or another would be an offense is  
8 punishable as a principal.

9 Thus, as to Count Two, if the defendant intentionally  
10 caused another to possess a machine gun or a destructive device  
11 during and in relation to or in furtherance of the  
12 drug-trafficking crime charged in Count One, then the defendant  
13 is guilty of the crime charged in Count Two just as if he had  
14 physically committed the crime himself.

15 Finally, you may also find the defendant guilty of  
16 aiding and abetting the crime charged in Count Two if you find  
17 that he actively participated in the drug-trafficking crime  
18 charged in Count One with advance knowledge that another  
19 participant in the crime would use or carry a machine gun or  
20 destructive device during and in relation to, or possess a  
21 machine gun or destructive device in furtherance of, that  
22 crime. Advance knowledge means knowledge at the time the  
23 defendant can attempt to alter the plan or withdraw from it.  
24 Knowledge of the machine gun or destructive device may, but  
25 does not have to, exist before the underlying crime is begun.

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1 It is sufficient if the knowledge is gained in the middle of  
2 the underlying crime, so long as the defendant continues to  
3 participate in the crime and has a realistic opportunity to  
4 withdraw from it. You may, but need not, infer that the  
5 defendant has sufficient foreknowledge if you find that  
6 defendant committed his participation in the crime after  
7 learning about the use, carrying, or possession of a machine  
8 gun or destructive device by a confederate.

9 If, and only if, you find the government has proved  
10 beyond a reasonable doubt that the defendant is guilty of  
11 committing or aiding and abetting the commission of the  
12 firearms offense in Count Two, you must then determine whether  
13 the offense involved a machine gun or destructive device. The  
14 verdict form will include spaces for you to indicate your  
15 determinations as to the type of firearm on Count Two.

16 A machine gun is any weapon which shoots, is designed  
17 to shoot, or can be readily restored to shoot, automatically  
18 more than one shot, without manually reloading by a single  
19 function of the trigger.

20 Destructive device includes any explosive bomb or  
21 grenade, and any type of weapon other than a shotgun or a  
22 shotgun shell that will expel a projectile by the action of an  
23 explosive or other propellant, that has any barrel with a bore  
24 of more than one-half inch in diameter. A bore is the hollow  
25 interior of the barrel of a gun.



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1 Count Three is also a conspiracy charge. It charges  
2 that from at least in or about 2009, up to and including in or  
3 about 2020, the defendant agreed with others to use and carry a  
4 firearm during and in relation to the drug-trafficking crime  
5 charged in Count One of the indictment, or to possess a firearm  
6 in furtherance of the drug-trafficking crime charged in Count  
7 One.

8 Specifically, Count Three charges that from at least  
9 in or about 2009, up to and including in or about 2020, the  
10 defendant and others intentionally and knowingly combined,  
11 conspired, confederated, and agreed together and with each  
12 other to violate the federal laws prohibiting using or carrying  
13 firearms in furtherance of the narcotics importation conspiracy  
14 charged in Count One. The object of the conspiracy charged in  
15 Count Three is the knowing use and carrying of firearms, and  
16 the knowing possession of firearms, in furtherance of the  
17 narcotics importation conspiracy charged in Count One,  
18 including machine guns that were capable of automatically  
19 shooting more than one shot without manually reloading by a  
20 single function of the trigger, as well as destructive devices.

21 To sustain its burden of proof with respect to the  
22 charge of conspiracy contained in Count Three of the  
23 indictment, the government must prove beyond a reasonable doubt  
24 the following two elements:

25 That the conspiracy charged in Count Three existed.

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1 In other words, from at least in or about 2009, up to and  
2 including 2020, there was an agreement or understanding between  
3 two or more persons to engage in one or more of the following  
4 types of conduct: To use or carry a firearm during and in  
5 relation to the drug-trafficking crime charged in Count One of  
6 the indictment, or to possess a firearm in furtherance of the  
7 crime charged in Count One.

8 Second, that the defendant knowingly and intentionally  
9 associated himself with, and joined in, the conspiracy.

10 I have already provided you instructions on what it  
11 means to use or carry a machine gun or destructive device in  
12 relation to a drug-trafficking crime, or possess a machine gun  
13 or a destructive device in furtherance of that crime. I've  
14 already instructed you on the law of conspiracy, and you should  
15 follow those instructions with respect to Count Three. All of  
16 those instructions apply equally here.

17 If, and only if, you find that the government has  
18 proved beyond a reasonable doubt that the defendant is guilty  
19 of committing the firearms offense charged in Count Three, you  
20 must then determine whether the offense involved a machine gun  
21 or a destructive device.

22 I have instructed you on the meaning of the terms  
23 "machine gun" and "destructive device" in connection with Count  
24 Two, and those instructions apply equally for the special  
25 interrogatory on Count Three.

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1           There will be a verdict sheet. Each of you will get  
2           it. Only your foreperson will fill it out, sign it, and return  
3           it after the jury reaches a verdict.

4           Yes?

5           JUROR: Can I go to the bathroom?

6           THE COURT: Yes.

7           Stand up and stretch. There's not much more to go.

8           (Pause)

9           THE COURT: Congress has determined that certain acts  
10          begun or committed outside the territorial jurisdiction of the  
11          United States are chargeable under U.S. law. This applies to  
12          Counts One, two, and Three of the indictments – there are three  
13          counts – thus, the government need not prove that the crime was  
14          committed in the Southern District of New York, this district,  
15          or that the defendant himself was present here. Instead, it is  
16          enough if you find that the point of entry where any  
17          coconspirator of the defendant was first brought into the  
18          United States was in the Southern District of New York. And I  
19          think I told you already, it's Manhattan, the Bronx,  
20          Westchester, Dutchess, Orange, Rockland, Putnam, and Sullivan  
21          Counties.

22          Thus, for example, if you determine that one of the  
23          defendant's coconspirators was first brought into the United  
24          States within the Southern District of New York in connection  
25          with the coconspirator's arrest, venue would be appropriate in

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1 the Southern District of New York as to the defendant.

2 You will note that the indictment alleges that certain  
3 acts occurred on or about various dates. It does not matter if  
4 the evidence you heard at trial indicates that a particular act  
5 occurred on a different date. The law requires only a  
6 substantial similarity between the dates alleged in the  
7 indictment and the dates established by the evidence.

8 Now, a few concluding instructions:

9 The possible punishment of a defendant in the event of  
10 a conviction is not a proper consideration for the jury and  
11 should not, in any way, enter into or influence your  
12 deliberations. The duty of imposing sentence belongs to the  
13 judge, and the judge alone. Your function is to weigh the  
14 evidence and to determine whether the defendant is or is not  
15 guilty upon the basis of the evidence and the law.

16 Therefore, I instruct you not to consider possible  
17 punishment in any way in your deliberations.

18 We have the exhibits loaded or ready to be loaded on  
19 the computer downstairs, and they will be available in the jury  
20 room. If you want any testimony read back, please send out a  
21 note specifying what you want to hear. Please be as specific  
22 as possible if you request any testimony to be read back. If  
23 you want any further explanation of the law, you may also  
24 request that.

25 Your requests for testimony – in fact, any

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1 communication with the Court – should be made in writing,  
2 signed by your foreperson, and given to the deputy marshal  
3 outside the jury room. In any event, do not tell me or anyone  
4 else what the vote is until after a unanimous verdict is  
5 reached.

6 I'm also, as I said, sending a copy of the indictment  
7 in. And, again, the indictment is just an accusation; it's not  
8 evidence.

9 Some of you took notes during the trial. Notes that  
10 any of you took may not be given any greater weight or  
11 influence in determination of the case than the recollections  
12 or impressions of another juror, whether from notes or from  
13 memory, with respect to the evidence or what conclusions should  
14 be drawn. Any difference between a juror's recollection and  
15 another juror's notes should be settled by asking to have the  
16 court reporter read back the transcript, for it is the record,  
17 rather than any juror's notes, upon which the jury must base  
18 its determination of the facts.

19 In a few moments, you'll retire to decide the case.  
20 It is your duty as jurors to consult with one another and to  
21 deliberate with a view to reaching an agreement. Each of you  
22 must decide the case for himself or herself, but you should do  
23 so only after a consideration of the case with your fellow  
24 jurors, and you should not hesitate to change an opinion when  
25 convinced that it is erroneous. Your verdict must be

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1 unanimous, but you are not bound to surrender your  
2 conscientiously held beliefs concerning the weight or effect of  
3 the evidence for the mere purpose of returning a verdict solely  
4 because of the opinions of other jurors.

5 Discuss and weigh your respective opinions  
6 dispassionately, without regard to sympathy, without regard to  
7 prejudice or favor for either party, and adopt the conclusion  
8 that in your good conscience appears to be in accordance with  
9 the evidence and the Court's instructions on the law.

10 Please remember, you're not partisans; you are judges,  
11 judges of the facts, not representatives of a constituency or a  
12 cause.

13 If at any point you find yourselves divided, do not  
14 inform the Court of the vote. Once you have reached a verdict,  
15 do not announce what the verdict is until I ask you to do so in  
16 the courtroom.

17 Once you get into the jury room, you must select a  
18 foreperson who will be responsible for signing all  
19 communications to the Court on behalf of the jury and for  
20 handing them to the deputy marshal. This should not be  
21 understood to mean that an individual cannot send a note to the  
22 Court should the foreperson refuse to do so.

23 After you reached a final verdict, your foreperson  
24 will advise the deputy marshal, outside your door, that you  
25 have reached a verdict. The foreperson fills out one copy of

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1 the verdict sheet, signs it as foreperson, and puts the date on  
2 it, and puts it in an envelope, and hands it to the deputy  
3 marshal, indicating that the envelope contains the verdict.

4 I will stress that each of you must be in agreement  
5 with the verdict that is announced in court. Once your verdict  
6 is announced by your foreperson in open court and officially  
7 recorded, it cannot ordinarily be revoked.

8 Your function now is to weigh the evidence in this  
9 case and to determine whether the government has or has not  
10 proven beyond a reasonable doubt the guilt of Defendant  
11 Geovanny Fuentes Ramirez with respect to each of the three  
12 counts in the indictment.

13 You must base your verdict solely on the evidence or  
14 lack of evidence in this case and these instructions. I am  
15 sure that if you listen to the views of your fellow jurors, and  
16 if you apply your own common sense, you will reach a verdict in  
17 accordance with the evidence and the law.

18 Finally, let me state that your oath that you took at  
19 the beginning of this trial sums up your duty, and that is:  
20 Without fear or favor to anyone, you will well and truly try  
21 the issues, based solely upon the evidence or lack of evidence  
22 and the Court's instructions as to the law.

23 Ladies and gentlemen, that concludes my instructions.  
24 Please stand up and stretch while I meet with the attorneys at  
25 the sidebar.

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1 (At the sidebar)

2 THE COURT: Anything from the defendant?

3 MR. MOSKOWITZ: No, your Honor.

4 THE COURT: Anything from the government?

5 MR. LOCKARD: No, your Honor.

6 THE COURT: All right.

7 This is what I'm going to do:

8 Flo, do you have the numbers of the alternates? I'm  
9 going to instruct the alternates that they're still on jury  
10 duty, that they're subject to recall, that they should go about  
11 their business but they cannot read anything about the case or  
12 discuss the case, and we'll let them know when there's a  
13 verdict, et cetera.

14 Where do we stand on the exhibits? Do you have it?

15 THE LAW CLERK: We have them on a disk. We have to  
16 load them up to the jury room, which should take a moment.

17 THE COURT: Okay, good. And you're going to do that?

18 THE LAW CLERK: Yes.

19 THE COURT: Okay.

20 THE DEPUTY CLERK: Because 5 left, Alternate 1 is in  
21 is, so we have Alternate 2, 3, and 4.

22 THE COURT: What seats are they in?

23 THE DEPUTY CLERK: This is 16, 15, 14. That's their  
24 numbers.

25 THE COURT: All right. Stay right here. Actually you



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1 better go back to your seats because I have to swear the  
2 marshal in too.

3 (In open court)

4 THE COURT: Where is Juror No. 14? Can you raise your  
5 hand.

6 Juror No. 15, can you raise your hand.

7 Juror No. 16, can you raise your hand.

8 All right. You are still on jury duty, and you are  
9 subject to recall. Because you're still on this jury, you're a  
10 sworn member of this jury, I instruct you that you may not  
11 discuss the case with anyone. You may not read or research  
12 anything about the case. Why? Because you are subject to  
13 being recalled, if during deliberations that became necessary,  
14 and you would be asked, under oath, whether or not you had  
15 discussed the case or read anything.

16 I promise you that we will call you when you are  
17 relieved of that obligation. When this jury is discharged, we  
18 will call you right away and let you know, and then you're free  
19 to discuss the case with anybody you choose. But you are  
20 subject to recall during the deliberation process.

21 You may go about your lives. Go back to work or home  
22 or whatever you choose, as long as you are reachable. You  
23 can't leave New York or anything like that; you have to be in a  
24 position to come back, if required and if requested.

25 With that, I'm going to say goodbye for now and tell

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1 you how much I deeply admire your service in this case.

2 So, with that, if those three jurors could please  
3 return to the jury room and collect your belongings, you may  
4 then depart the building. If this were non-COVID times, I'd be  
5 everybody stand up in deference to you, but we honor your  
6 service. Thank you.

7 (Alternate jurors not present)

8 THE COURT: And if the deputy marshal will come  
9 forward, the oath will be administered.

10 (Deputy marshal sworn)

11 THE COURT: Thank you.

12 Now, ladies and gentlemen, just informationally: As I  
13 said to you, know that you're in the deliberation mode, and not  
14 only may you discuss the case among yourselves – you're  
15 required to – you may work on a schedule that's a little bit  
16 more in your control. I will assume that you will want to  
17 leave the building at 5:00 o'clock today. If, for some reason,  
18 you want to stay longer, that's not a problem whatsoever, but I  
19 just ask that you just give a short note to the deputy marshal  
20 and he will let us know. So that's the only thing I request  
21 there.

22 The exhibits are being loaded onto the computer  
23 downstairs, if you want to look at any of them.

24 One rule: If you leave today at 5:00 o'clock, be back  
25 here 9:30 Monday morning. All right?

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1           You may not begin your deliberations unless and until  
2 all 12 of you are present. So, if somebody is delayed, you  
3 can't start talking about the case until the 12th person has  
4 arrived. So that's where we are. You may now discuss the case  
5 among yourselves, and you may return to the jury room.

6           (Jury not present)

7           THE COURT: So, a few housekeeping and other matters:

8           Number one, I subscribe to what I call the  
9 eight-minute rule, which is, if we get a note from the jury,  
10 you have to be someplace where you'll be back in this courtroom  
11 within eight minutes, and Flo has to be able to reach you so  
12 that you are back in this courtroom.

13           Me practice, generally, is, if we get a note, I'll  
14 have it marked, I'll know what's in the note, but Flo will show  
15 it to you when you get to the courtroom, even before I take the  
16 bench, so you can begin working or formulating your ideas as to  
17 how to respond to it. So, that's that.

18           Now, I want to talk to the lawyers for a moment. I  
19 think the presentation of evidence by Mr. Lockard,  
20 Mr. Gutwillig, Mr. Moskowitz, and Mr. Schulman was uncommonly  
21 good, it was superior. It's a credit to the bar of the  
22 Southern District of New York. And I want each of you to know  
23 that you're always welcome back in this courtroom, that I have  
24 a high opinion of each of the four of you.

25           It becomes my duty, as the trial judge, from time to

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1 time, to move people along or to tell an attorney when I think  
2 questioning is not appropriate or out of line or do whatever  
3 one needs to do to fairly have the case proceed, and I make no  
4 apology for that. But I also quickly add that if it was the  
5 case that I said or did anything which in any way offended you,  
6 please don't take offense at it – I have a genuine high regard  
7 of you, very well done, very well tried, very effectively tried  
8 – it's just what I do for a living; we're in different roles in  
9 this case. So, we don't know what the jury's verdict will be,  
10 we don't know the outcome, but I think you all should go home  
11 to your families confident that you acquitted your roles in  
12 this wonderful system that we have.

13 We're adjourned. Thank you.

14 I also want to thank our court reporters and our  
15 interpreters, our deputy marshals, our paralegals, or the  
16 government's paralegal I should say, for all of their  
17 assistance, and I certainly thank my own staff. Thank you.

18 (Recess pending verdict)  
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